

C. Discussion of Specific Comments

The following is a discussion of individual comments which either were not appropriate for discussion in the text, or which did not fall into the general categories discussed above.

1. A comment was received from the Environmental Protection Agency (EPA) related to the public availability of information on the NFIP and requesting the inclusion of specific material in the final environmental statement. The inclusion of the suggested information in the accessory materials to this assessment is impractical from the standpoint of bulk alone. The Program's "eligibility list," for instance, which provides information on those communities which have received Flood Hazard Boundary Maps and Flood Insurance Rate Maps, contains information on over 15,000 communities and is well over 300 pages in length. Moreover, this information is already being distributed periodically to most of those who have commented and is easily accessible to all interested parties upon request. It is currently being received by several EPA offices, especially in the field, as well as many other Federal agencies and instrumentalities, state governments, insuring and realty companies and others. Information on the availability of the Program's maps and their depositories, and other general and specific issues is available by writing to the U.S. Department of Housing and Urban Development, Federal Insurance Administration, Washington, D. C. 20410, or by calling the following toll-free numbers: (800) 424-8872, 8873.

Another comment received from EPA related to the draft environmental assessment's omission of any consideration of the incorporation of a requirement in the regulations which would have potential new construction applicants demonstrate why the proposed development should most properly be located in the flood plain. This issue was not dealt with in the draft

statement because it goes beyond the legislative authority of the NFIP. Any such responsibility lies more squarely with the individual community. The Program's legislative authority authorizes only those requirements directed solely to flood damage reduction. Thus, a community, in reviewing new development proposals must decide whether such development is appropriate, in the context of the need to ensure the health, safety and welfare of its citizens under the police power. Using its discretion, it may then disallow the development, or it may permit it contingent upon meeting the regulatory requirements designed to ensure its protection. This review responsibility gives the community the opportunity to critically evaluate proposed development in light of its potential effects. FIA has recognized this issue in the Planning Considerations section of the regulations in an effort to ensure that community's completely evaluate all new development proposals in their flood-prone areas (see Section 1910.22(c)).

The remainder of EPA's comments were dealt with in the text as hereafter noted:

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|----------------------------|---|
| A. General Comments | - see Description of Action, p. 1 ff. |
| B. Flood Plain Development | (see "Subsidies," p. ⁷⁵ 69 , and |
| 1. General Issues | ("Economic Impacts," p. ⁶⁰ 54 |
| Paragraph 1 | (|
| Paragraph 2 | - not applicable to EIS, comment on regulations. |
| Paragraph 3 | - see above. |

2. Enforcement

Paragraph 1

- There is no section of the final EIS which directly corresponds to that referred to - this section has been reordered and dealt with in a number of separate areas - the quoted phrase has been deleted.

Paragraph 2

3. Additional Guidance Required

- see Description of Action, part F.
- Part F of the Description of Action refers to a number of publications which will provide additional guidance of the type referred to.

C. Environmental Assessment

- HUD Handbook 139.1, which does not provide for such a procedure, is currently being studied with a view to making substantial revisions in the Department's environmental policies and procedures. The incorporation of the requested procedure will be considered for inclusion in the revisions to HUD Handbook 1390.1.

- D. Economic Issues - see pps. ⁵⁵⁻⁶⁹~~49-63~~.
- E. Protection of Facilities - the regulations apply to all new development in identified special flood hazard areas.
- F. Public Availability of Information - see above.

2. A comment was received from the Tennessee Valley Authority (TVA) relative to FIA's policy of encouraging the use of piles or columns for elevation purposes rather than fill. TVA notes that this policy may or may not be beneficial from the standpoint of safety. Construction experience indicates that over the life of a structure, each of these mechanisms for structural elevation perform similarly when properly placed and secured. FIA encourages the use of piles or columns in riverine situations in order to maintain the storage capacity of the flood plain (see Section II B for additional discussion of valley storage). In coastal high hazard areas (those portions of the coastal flood plain subject to wave action) this design is encouraged from a safety standpoint, in light of the erosion potential of fill under the impact of high energy wave action. In both riverine and coastal situations, the cost of elevation by fill can be substantially higher than that necessary for piles or columns as the elevation requirement exceeds three feet. The TVA comment is relevant, however, and HUD is planning a study of the structural integrity of structures built on piles and columns.

Another comment received from TVA related to costs associated with contesting the accuracy of FIA's technical data. In most instances, a property owner will not incur great expense in providing technical data to support a contention that a property has been incorrectly identified as being in a special flood hazard area. Since FIA will review and consider any technical data submitted to support an appeal, the only expense is that of gathering existing flood information to contest FIA's findings. It would be unusual for an individual or local community to appeal if there were no technical data which led them to believe that the FIA flood hazard boundary was in error. Furthermore, both local officials and interested citizens are consulted throughout the course of a flood insurance study. Thus, they have an opportunity to assure that factors which they believe are relevant are considered when flood elevation determinations are being made.

3. Comments were received from both the New England River Basin Commission and the Houston, Texas, Chamber of Commerce relating to the role of environmental considerations in the administration of the NFIP and the scope of environmental impacts resulting from the Program's implementation.

FIA feels that these comments must be addressed for clarification purposes. One comment notes that neither the NFIP legislation nor its supportive documentation mentions benefits to the environment as being of primary importance to the Program. FIA concurs with this statement, but notes that it is subject to the requirements of the National Environmental Policy Act of 1969 (NEPA) which establishes a national policy requiring all Federal agencies to give full consideration to environmental effects in planning and carrying out their programs. Specifically, in Article 102(1) of NEPA, Congress stated that "to the fullest extent possible, the policies, regulations and public laws of the United States of America shall be interpreted and administered in accordance with the policies set forth in this Act." Thus, FIA's mandate is clear in the administration of the NFIP. It must take cognizance of the Program's potential for ensuring the quality of the environment and must also prepare a detailed statement of environmental impact on all of its actions which might significantly affect environmental quality.

FIA must emphasize that nowhere in the flood plain management requirements of the Program are there included regulations which do not directly relate to flood damage reduction. This results from careful evaluation of FIA's legislative authority relative to the development of criteria applicable within participating communities. However, it is obvious that direct impacts having specific application to environmental quality result from the application of the Program's regulatory requirements and these have been addressed in the text of this assessment. The Program's regulatory requirements for floodway areas are a significant example. These requirements prohibit encroachments into

that area of the flood plain which is likely to have the highest degree of ecological sensitivity. FIA feels that there is no basis for contending that this environmental assessment constitutes a "justification of the Program on the basis of environmental benefits."

4. The State of Connecticut expressed concern about the need to revise the Program's technical data periodically. FIA recognizes the fact that technical data of the sort used in the NFIP may be subject to periodic revision. The need for and frequency of such revisions will vary according to a number of influences and activities which may be carried on in or near a flood hazard area. This need is currently unavoidable pending receipt of the results of a study now underway to develop a mechanism for recognizing future development. Essentially, then, there is now no alternative to the process of revision to reflect substantially altered conditions. The annual report discussed earlier in this section provides one review mechanism through which communities can notify FIA of significant physical changes which could affect their flood hazard areas. Further, Part 1915.5 of the regulations provides additional specific procedures for the submission and review of technical data which may be presented at any time. These procedures have been implemented to assure communities the most accurate, up-to-date technical information.

Another comment received from the State of Connecticut related to the absence of a specific use category (uses permitted by right) in the Program regulations. Although this comment does not specifically fall within the purview of this assessment, the following response is included for clarification.

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The regulations do not set use categories, rather they set performance standards for new development in flood hazard areas. Participating communities then set either design criteria or use categories at their own discretion based on the Program's standards.

5. A comment was received from the State of Maryland relative to the fact that certain of its upland counties are subject to unique flood problems. Recent studies have recognized that the Appalachian Region which includes these counties experiences a somewhat larger percentage of natural disasters when compared to the rest of the Nation, and is for a number of physical, economic and social reasons less able to adjust to natural hazards. Among the hazards to which this area is exposed, floods are the most common and result in the most frequent and severe losses. FIA has recognized this problem and is working closely with the Appalachian Regional Commission in a study designed to develop specific mechanisms to deal with natural hazards, including floods, which will ensure a balance between the need to provide adequate protection to the area's residents and the assurance of its economic progress.

6. A comment was received from the State of Ohio which noted that past research into post-flood response questions the draft environmental statement's assertion that the regulations may cause residents to relocate to sites which have a lesser flood risk. The constraints which affect the post-flooding settlement of flood hazard areas have significantly increased since much of the cited hazard literature was developed. In addition, the perception of the flood hazard and the receptivity to a broad spectrum of

adjustments (including relocation of the investment at risk) have also increased. In the past, the major constraint to reinvasion of the flood plain in the face of potential future losses was the rather traumatic memory of the disaster experience. However, the cited literature has documented both the rapid atrophy in the effects of this constraint, and the long list of counteracting forces, especially the predominant trend to return to normal. Because the flood occurrence disrupts a community's and an individual's schedule and well-being, it has generally been perceived that the quickest and easiest path to restoration lies in relocation and the reconstruction of what previously existed. Thus the stage is set for future losses. The NFIP has since introduced a number of constraints which tend to counteract this trend. As discussed in the Introduction to Part II of the text, the flood plain management standards, the insurance purchase requirement and the systematic nationwide identification of flood hazard areas, constitute a significant disincentive to such post-flooding reexposure, especially in the floodway.

7. A comment by the State of Pennsylvania addressed the requirement that communities consider existing technical data in carrying out their flood plain management regulatory efforts (see Section 1910.3(b)(3)). This comment related to the rationale behind its inclusion and its impacts. Initially, it should be noted that this is not a "new" requirement in that it serves only to clarify, strengthen and make more definitive Section 1910.2 of the regulations which require that all eligible communities must take the flood hazard into account to the extent that it is known in all

official actions (see 1910.1(c)). Strengthening of this requirement was necessary since communities were ignoring existing data of which they had full knowledge and which could provide the basis for protecting lives and property in areas of known flood risk. The impacts which may be expected to result from reliance on such data should not vary from those described in the text of this assessment.

The Pennsylvania comment continues with a discussion of the accuracy of FIA's data, and the impacts resulting from inaccurate data. FIA is currently using the most advanced methodologies in its studies and subjecting its studies to careful review. They can be expected to provide the most accurate available data in light of specific economic and technological constraints. Where this data is in error and results in too extensive a delineation, more area will be subject to the impacts described in text than is warranted by the actual risk. Where a delineation covers insufficient area, the study will be inadequate in providing the necessary degree of protection to flood-prone property.

3. A comment received from the Houston, Texas Chamber of Commerce related to FIA's policy on environmental assessments. For clarification purposes, the requirement that environmental assessments be carried out for exceptions from the flood plain management standards does not relate to situations where flood hazard area delineations are altered by the influence of structural protection works. Such necessary revisions to the flood hazard maps are carried out according to the procedures set out in Part 1915.5 of

the regulations. These provisions have been established in order to ensure that the technical data made available to participating communities is the most accurate and up to date information available. There is no intent here to undercut the discretion of communities in tailoring their flood plain management efforts to meet their own specific needs. In fact, all communities are encouraged through the planning provisions of the regulations (Part 1910.22) to explore the full range of flood plain management adjustments in their efforts to protect life and property from the flood hazard.

9. A comment was received from the Environmental Defense Fund relative to coordination between FIA and other Federal agencies involved in flood damage reduction on the issue of whether the revisions in the NFIP regulations will alter emphasis from one method of flood hazard reduction to another. While FIA continually coordinates with other Federal, State and local agencies and organizations involved in flood-related problems, no specific consideration has been given to the issue of the revision's impacts on other programs from the standpoint of affecting significant other action in the content or goals of such programs since the revisions have no effect on the non-structural emphasis of the NFIP approach to flood damage reduction.

D. Text of Comments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 14 1975

OFFICE OF THE
ADMINISTRATOR

Mr. Richard Broun
Environmental Clearance Office
Room 8208
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Mr. Broun:

The Environmental Protection Agency has reviewed your draft environmental impact statement (EIS) on the "Flood Plains Management Regulations of the National Flood Insurance Program," and your proposed Parts 1909-1911 of Title 24 of the Code of Federal Regulations (24 CFR 1909-1911).

We believe that the proposed regulations represent a significant improvement over the present practices involving flood plain management and flood disaster relief; however, we believe they could be even better. In the enclosed comments, we suggest several modifications which we believe would further the long term goals of (1) achieving more responsible use and management of the flood plains and (2) providing a means for the purchase of flood insurance by individuals at affordable rates.

The format of the proposed regulations impeded our review. Publishing a series of textual amendments as you did, required the reviewers to refer repeatedly back and forth between the existing regulations and the proposed amendments. We urge that the final regulations be published as a single, complete document, which incorporates both those segments of the existing regulations that will remain in effect and the new segments.

In general, we would have favored the more stringent alternative to which you alluded on page 17 of the draft EIS. We hope that the final EIS makes explicit the "realistic economic and hydrological considerations" which apparently dissuaded you from selecting that alternative.

REC-5
We also believe that these regulations would be strengthened by explicit references to E.O. 11296. The enclosed comments contain specific suggestions in this regard.

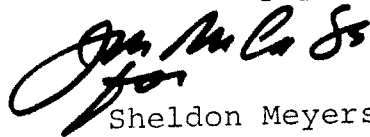
We understand that you seek to control rather than prohibit development in the flood plains and that you must formulate your regulations within various legislative constraints. We agree that your flood insurance program is infinitely preferable to a simple disaster relief program. But we believe that your regulations should (1) clearly distinguish between existing and proposed structures and (2) not provide subsidized rates for structures constructed after the effective date of these regulations.

We believe the communities served by the HUD insurance program should control development in presently undeveloped flood plains which may have significant value for recreation, wildlife habitat, or agricultural production. We believe that before a community permits any development in a flood plain, it should require the developer to analyze all alternatives, and the community should make a finding that locating the proposed development elsewhere is neither feasible or reasonable. We agree that all structures built in a flood plain should be floodproof, but we hope that only an essential minimum of structures are built there.

We have classified the draft EIS as ER-2. Specifically we have environmental reservations with the regulations (ER), and we feel that more information is needed on the impacts of these regulations (2). The classification and date of our comments will be published in the Federal Register in accordance with Section 309 of the Clean Air Act.

We appreciate the opportunity to comment on your draft EIS and on the proposed regulations, and we would welcome the opportunity to discuss the issues we have raised before the final EIS and final rulemaking are issued. Please send us six (6) copies of the final EIS when it is available. If we can be of further assistance, please contact Mr. Charles Maneri of my staff (245-3007).

Sincerely yours,



Sheldon Meyers
Director
Office of Federal Activities

Enclosure

Environmental Protection Agency
Comments on
Flood Plain Management Regulations and Associated
Draft Environmental Impact Statement

A. General Comments

We realize that the proposed rulemaking is essentially a revision of prior regulations promulgated as a result of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1968. However, the draft EIS does not contain a discussion of the actual proposed revisions as compared to existing regulations. We believe that a thorough comparison should be included in the final EIS, so that the environmental benefits associated with the proposed changes are clearly identified. We also recommend that final publication of these proposed revisions be incorporated in a single document along with those elements of the current regulations that would remain in effect.

B. Flood Plain Development

1. General Issues

The EIS should include a discussion of the "growth inducing" impact of this program. Prior to 1968, undeveloped land in flood-prone areas was uninsurable. Such land can now be developed and is eligible for insurance under claims of hardship, and such development could adversely effect the natural values of flood plains for recreation, wildlife habitat, and agricultural production. The resulting increased development could impact on surrounding areas and related services, could create secondary impacts and additional problems, and could lead to demands for additional flood control structures with their attendant adverse environmental effects. We suggest that these issues be discussed fully in the final EIS.

Reg's We recommend that Section 1910.1 of the proposed regulations be expanded to include reference to Executive Order 11296, which requires that "...all executive agencies shall, as far as practicable, preclude the uneconomic, hazardous,

or unnecessary use of the flood plain..." In furtherance of this policy, regulations should avoid encouraging development which might eventually result in large expenditures of public funds for disaster relief or increased demands for flood control works. The regulations should not encourage building in the flood plain but should encourage parkland, agricultural land or similar low risk (and environmentally appropriate) uses of the flood plain.

1865 The EIS states (on page 8) that "adoption and enforcement of adequate flood plain management regulations will result in the prevention of adverse impacts associated with construction that would otherwise have occurred. Prospective and existing residents may locate elsewhere because of the flood plain management measures." These statements are partially accurate; however, the EIS fails to recognize that the regulations treat new construction and existing construction the same when it comes to the rates charged. This clearly does little to discourage new development. The alternative of charging new construction the actuarial rate for flood insurance while charging existing construction the subsidized rate should have been evaluated in the EIS. A provision to require potential new construction applicants to demonstrate why the proposed construction should most properly be located in the flood plain should have been evaluated in the EIS for incorporation in the requirements for community controls as a means to discourage environmentally incompatible and uneconomic flood plain use.

2. Enforcement

We question the significance and meaning of the following statement on page 11 of the EIS: "This supplies them with the opportunity, though not an obligation to review for environmental impacts other than flooding."

The adoption of flood plain management regulations by local jurisdictions is a key element in maintaining their eligibility in the flood plains insurance program. The effective enforcement of such regulations, containing adequate provisions, is needed to prevent undesirable flood plain development. The draft EIS does not describe a system for the enforcement by either local agencies or HUD of such regulations. Our concern is that, although the building permit system would allow a review of actions, it would not achieve the desired result of

minimizing undesirable development unless: (1) it contained specific requirements to analyze and discourage undesirable uses of flood plains, and (2) it were accompanied by a rigorous enforcement effort. The final EIS should consider and discuss the enforcement of the flood plain management regulations. Mechanisms for participation by members of the public in an effective enforcement effort should be provided.

3. Additional Guidance Required

Although a permit system for construction in the flood plain is embodied in the regulations, additional guidance should be provided to aid communities in reviewing permits for proposed construction, so that they adequately consider the severity of risk, the present uses and values of the flood plain, and alternative development areas.

C. Environmental Assessment

The draft EIS states (on page 5) that exceptions to flood plain management regulations will undergo the environmental assessment procedures set forth in HUD Circular 1390.1. Whenever the environmental assessment results in a negative declaration, we request that the negative declaration and accompanying environmental assessment be made available to EPA for review.

D. Economic Issues

Since E.O. 11296 directs Federal agencies to use their influence to preclude uneconomic use of the flood plains, it would seem appropriate for the final EIS to discuss such questions as the costs and benefits of (1) developed vs. undeveloped flood plains and (2) subsidized vs. unsubsidized insurance rates.

E. Protection of Facilities

regs Drinking water supply and wastewater treatment systems which have been built in the flood plains should be adequately protected and insured. In working with communities, HUD should attempt to assure that these facilities are included in the program.

F. Public Availability of Information

The final EIS should clearly indicate which of the Flood Hazard Boundary Maps and the Flood Insurance Rate Maps (identified on pages 1 and 2 of the EIS) have been released and when the others are due to be released. Information on the availability of flood hazard maps and the depository(ies) of the maps would be useful information for those public and private bodies who have a need to know, and especially in view of the requirement that flood-prone communities must enter the program within one year after a hazard area has been identified.



DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:

DAEN-CWP-V

24 February 1975

Mr. Richard H. Broun
Environmental Clearance Officer - Room 8208
Department of Housing and Urban Development
Washington, D. C. 20410

Dear Mr. Broun:

This is in response to your letter of 13 December 1974 (CSP) requesting comments on the draft environmental impact statement for the proposed Land Management and Use Regulations of the National Flood Insurance Program. Comments on specific items in the draft statement are as follows:

a. Page 17, paragraph III,A.1. The third sentence should be restated to eliminate the implication that the Corps of Engineers has a 500-year flood standard. The proper reference should be the Standard Project Flood (SPF) which has a variable frequency interval depending upon the basin topography and experienced rainfall and floods in the basin and/or the region. Accordingly, the 100-year flood standard is not the mid-point between the 500-year standard and lesser standards below the 100-year as stated.

b. Page 20, paragraph IV,B.3. The paragraph should be restated to indicate that development in the flood plain causes higher water surface elevations upstream. Downstream water surface elevation increases result from a loss in valley storage which increases flood discharges.

The opportunity to review and comment on the draft statement is appreciated.

Sincerely yours,

JOHN F. WALL
Colonel, Corps of Engineers
Assistant Director of Civil Works,
Environmental Programs



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Science and Technology
Washington, D.C. 20230

February 14, 1975

Mr. Richard H. Broun
Environmental Clearance Officer
Department of Housing & Urban
Development
Washington, D. C. 20410

Dear Mr. Broun:

The draft environmental impact statement for Flood Plain Management Regulations of the National Flood Insurance Program which was forwarded with an undated letter from Mr. David O. Meeker, has been received by the Department of Commerce for review and comment.

The statement has been reviewed and the following comments are offered for your consideration.

General Comments

Although the draft statement does not relate to site specific areas, it should discuss the extent to which the proposed action is in harmony or in conflict with state land use plans, policies, and regulations. For example, in implementing coastal zone management programs, a considerable amount of planning and coordination is necessary between states and localities to assure that state programs are being administered adequately at the local level.

Most of the statement appears to stress the direct positive effects the implementation of the regulations could have on the environment. While this may reflect the benefits of the program, the draft statement should also mention and discuss the secondary, or indirect, impacts that will be associated with these regulations.



Specific Comments

Page 8 - Impacts on the Natural Environment. This section stresses only the impacts on the flood plain but does not discuss the adverse environmental impacts which will not necessarily be prevented but may only be diverted to other areas adjacent to or outside of the flood plain. Moreover, impacts on the natural environment may often be greater (although this may not apply to the human environment) in such areas because of the topography involved, etc. For example, many areas adjacent to or outside of the flood plain may have steeper slopes and construction in this area may greatly increase soil erosion and subsequently sedimentation. The discussion of impact numbers 1 and 2 could be improved to more accurately reflect the negative impacts that could occur in areas outside the flood plain. Some suggested wording follows:

1. "The adoption and enforcement of adequate flood plain management regulations should result in the minimization or prevention of adverse environmental impacts associated with construction and human activities that would otherwise have occurred in the flood plain. However, many of these future impacts will occur outside of the flood plain and therefore cause a diversion but not a reduction of many of these adverse environmental impacts."

2. "The flood plain management measures may cause prospective and existing residents to locate elsewhere on sites less prone to floods and thereby increase developmental pressures in such areas. This, at least, will tend to preserve the flood plain in its present stage of development and may result in a reversion to a more natural state."

Page 9 - No. 7. This statement is inconsistent and needs further clarification. The program does not necessarily promote the preservation of wetlands when, in essence, a builder need only put in additional fill required to reach the 100-year flood level. "Unwise occupation" as reflected here, does not mean removal from wetlands but only additional fill to elevate the structure.

Page 9 - No. 10. The positive effects to plant and animal life may be overstated. As stated in Impact No. 3, flood plains often make good agricultural lands but "monocultures," golf courses, and other "environmentally clean" land uses may be as disruptive to natural plant and animal life as high-density development.

Page 13 - Impacts on the Social Environment. This section also should indicate the impact on a community if it does not comply with the regulations and Federal funding for school buildings and other social services and these services are thereby not available.

Thank you for giving us an opportunity to provide these comments, which we hope will be of assistance to you. We would appreciate receiving a copy of the final statement.

Sincerely,

A handwritten signature in cursive script that reads "Sidney R. Galler".

Sidney R. Galler
Deputy Assistant Secretary
for Environmental Affairs



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

In Reply Refer To:
ER-74/1502

FEB 24 1975

Dear Mr. Meeker:

Thank you for your letter of December 13, 1974, requesting our views and comments on the draft environmental impact statement on Flood Plain Management Regulations of the National Flood Insurance Program. We have both general and specific comments.

General Comments

The draft environmental impact statement does not sufficiently emphasize the importance of keeping undeveloped flood plains for open space uses. We feel this would add to the statement's effectiveness. The statement should also address itself to ways that the flood insurance program can be used to discourage building on undeveloped flood plains or rebuilding after a flood.

We believe that Federal grant, loan, and mortgage insurance programs should not be used for new residential, commercial, industrial, or other high density use within flood plains unless no prudent or feasible alternative locations exist. We do believe, however, that the Flood Plain Insurance Program offers excellent, but as yet not fully realized, potentials to alter traditional land use patterns within the flood plain.

We question the overriding theme of the statement that the revised regulations will be an effective deterrent to development of the flood plain. For example, the wide latitude of variances and exceptions mentioned on page 4 permits construction under a number of somewhat vaguely defined situations. The environmental impacts of allowing these variations and exceptions should be further explored and discussed. We also recognize the fact that flood control structures are allowable alternatives and may result in a redefinition of the flood plain. The statement should discuss the environmental impacts of allowing these alternatives.



Save Energy and You Serve America!

There appears to be no mention of Executive Order No. 11296 requiring Federal agencies to refrain from making any grants or loans or from insuring any loans that would be used for the construction of facilities in flood plains where evaluation indicates such flood plain use would be uneconomical, hazardous, or unnecessary. While we realize the revised regulations have been built around this Executive Order we recommend that the final statement address this subject more fully.

Impacts related to geologic conditions are adequately discussed in the environmental statement, and we find the document to be reasonably adequate and accurate in its evaluation of the impacts of the proposed program on water resources and related aspects of the environment. We find the recognition of possible serious errors in determination of 100-year flood magnitude to be commendable, and the appeals procedure available to communities is well covered.

Specific Comments

Description of Proposed Action

Page 4 - 1a: "Individual variances may be approved if they are for new structures to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection elevation." This variance could permit the building of a chain of new structures along a flood plain and therefore we suggest that the probable cumulative impact resulting from the allowance of this variance be discussed in the final environmental impact statement.

Analysis of Environmental Consequences

Pages 8 and 9: Impacts on Natural Environment. The statement asserts that the program regulations will have general impacts tending to discourage construction and encourage preservation of the flood plains in their natural states. We feel the assumptions made in the statement that the program regulations would have this type of impact are not fully described and recommend that the reasoning behind this conclusion be further discussed.

The impacts listed seem to be phrased as mitigating factors which will result from implementing the proposed regulations. For instance, "The adoption and enforcement of flood plain management regulations will result in the prevention of adverse environmental impacts associated with construction that would otherwise have occurred." In addition, the statement of impact could indicate that "As a result of implementing the regulations, developments will occur on land other than in flood plains."

A regrouping of related items in this section might be helpful. For example, items (3) and (9) are related as are items (7), (8), and (10). Item (9) associates a reduction in pollution with industrial development; the same hypothesis would appear to apply to residential and commercial development as well. Item (11) appears to be better classified under the heading "Impacts on the Social Environment: Safety" on page 14.

The proposed regulations will not eliminate construction, as implied in item 1 on page 8. Instead, they may result in more construction outside of flood hazard areas, or in construction of different quality. Similarly, the proposed regulations may not reduce the potential for pollution by waste water and chemical wastes, as implied in item 9 on page 9. They may only result in relocation of the source of such pollution.

It would appear desirable to present some discussion of relocation impacts for residential development, mentioned in item 2, page 8, and for commercial and industrial development.

In item 3 it is stated that "due to flood plain management regulations, the land in many instances may be used for 'environmentally clean' purposes (agriculture, recreation, etc.) instead of industry and heavy permanent development. Because the regulations are directed primarily at structures, uses that do not require structures are, thereby, encouraged." The assumption that all agricultural and recreational use(s) of flood plain lands are without environmental impact potential is erroneous. Some land use practices including burning of woody and herbaceous vegetation, use of herbicides, fall plowing, and wetland drainage can be very damaging to the natural environment, and can lead to the destruction of fish and wildlife habitat.

Page 11 - 3: "The implementation of construction standards contained in these regulations will reduce future flooding damage. Also, the amount of post-flooding rebuilding will be reduced. This will cause a reduction in those impacts associated with post-flooding recovery and reconstruction." We agree with this statement but feel the environmental impact statement should contain further analysis to substantiate this conclusion. We suggest that the final environmental impact statement include further discussion on this topic.

On page 15 the aesthetics discussion should also evaluate the aesthetic value of open space use of flood plains.

The discussion of "Economic Effects," page 15, should include some discussion of the added economic costs for flood insurance and floodproofing measures, and the benefits from reduction of flood damage and need for emergency aid.

Page 16 - B2: "As a secondary effect, the flood insurance program may cause a community to construct protective works (dams, dikes, levees, sea walls, etc.). The specific impacts on the environment would vary depending upon the location and type of protective work constructed. FIA does not encourage the building of protective works." We recommend that the potential range of impacts be further explored and presented in the final statement.

Alternatives to the Proposed Action

It appears that different degrees of control rather than actual alternatives are discussed under "Alternatives to the Proposed Action" on pages 17 and 18. We recognize that the proposed regulations have been prepared in response to a legislative mandate and there may be little freedom to choose alternatives. However, it would appear desirable to point out the advantages and limitations of potential solutions such as structural measures as we have pointed out above.

Page 17 - A2: "The Federal Insurance Administrator could have chosen not to make any changes in the regulations at this time. This alternative is unacceptable, because the proposed changes represent evolving policy established by FIA on the basis of its experience in administering the program under the existing regulations and also reflect new statutory requirement." The statement does not clearly

define a "no action" alternative in that the conclusions of FIA's experience in administering the program under the existing regulations and the new statutory requirements are not described. We recommend that the final statement more fully explain this alternative including its environmental impacts.

Short-Term Use/Long-Term Productivity

Page 20 - 4: "The Federal Insurance Administration in no way encourages the building of protective works (dams, dikes, etc.). However, in order to meet the 100 year flood protection requirement, a community may elect to build such works instead of elevation structures." The building of these works could result in a redefining of the flood plain and have demonstrated impacts on the environment. We therefore recommend that the final statement examine this effect on the long term productivity of the flood plain.

We hope these comments will assist you in preparing the final environmental statement.

Sincerely yours,



Secretary of the Interior

Deputy Assistant

Mr. David O. Meeker, Jr. FAIA
Assistant Secretary
Department of Housing and
Urban Development
Washington, D. C. 20410



UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

FEB 11 1975

Mr. Richard H. Broun
Environmental Clearance Officer - Room 8208
Department of Housing & Urban Development
Washington, D.C. 20410

Dear Mr. Broun:

This is in response to your letter of December 13, 1974, inviting the U. S. Atomic Energy Commission (AEC) to comment on the Draft Environmental Statement for Land Management and Use Regulations of the National Flood Insurance Programs.

We feel that the Federal Insurance Administration has addressed a most difficult issue in a most realistic manner. The use of the 100-year flood level for limiting flood plain construction appears to be well thought out.

Notwithstanding the many areas of this Draft Statement which may be considered conjectural, we feel that the quality of the environment will generally be improved by the adoption of the proposed revised regulation.

Since your December letter, the AEC is no longer in existence. Its regulatory functions have been transferred to the Nuclear Regulatory Commission (NRC) and its research and development functions have been assumed by the U.S. Energy Research and Development Administration (ERDA). In the future, draft statements should be sent to both Agencies for review and comment. ERDA will require eight (8) copies for the review process. They should be sent to the Office of the Assistant Administrator for Environment and Safety, U.S. Energy Research and Development Administration, Washington, D.C. 20545

Sincerely,

W. H. Pennington
Assessments and Coordination
Officer
Division of Biomedical and
Environmental Research

cc: CEQ (5)

Missouri River Basin Commission

Suite 403 • 10050 Regency Circle • Omaha, Nebraska 68114

John W. Neuberger
Chairman

William C. Brabham, Iowa
Vice-Chairman

Also known as the Upper Missouri River Basin Commission

January 15, 1975

Mr. Richard H. Broun
Environmental Clearance Officer - Room 8208
Department of Housing & Urban Development
Washington, D.C. 20410

Dear Mr. Broun:

This is in response to your letter of December 13, 1974, inviting comments of the Missouri River Basin Commission (MRBC) on the Draft Environmental Impact Statement for Flood Plain Management Regulations of the National Flood Insurance Program.

Current MRBC staff assignments will not allow us to develop and provide technical comments on environmental impact statements. It is understood as standard interagency review procedure, that several member agencies of MRBC (including the States of Colorado, Minnesota, and South Dakota) have been invited to comment and will do so by responding directly to your office.

Thank you for your invitation to comment and for keeping my office informed.

Sincerely,



Nicholas L. Barbarossa
Director of Planning

NLB/seh

Colorado
Atomic Energy Commission
Iowa
Department of Commerce
Kansas
Department of Agriculture
Minnesota
Department of the Army

Missouri
*Department of Health
Education and Welfare*
Montana
*Department of Housing
and Urban Development*
Nebraska
Department of the Interior

North Dakota
*Department
of Transportation*
South Dakota
*Environmental
Protection Agency*
Wyoming
Federal Power Commission

*Yellowstone River Compact Commission
Big Blue River Compact Administration*

NEW ENGLAND RIVER BASINS COMMISSION

NERBC

55 COURT STREET • BOSTON, MASSACHUSETTS 02108
PHONE (617) 223-6211

February 19, 1975

Mr. Richard H. Broun
Environmental Clearance Officer - Room 8208
Department of Housing and Urban Development
Washington, D. C. 20410

Dear Mr. Broun:

The purpose of this letter is to furnish comments on the Draft Environmental Impact Statement prepared by HUD covering regulations to the National Flood Insurance Program.

These comments are being submitted on behalf of New England River Basins Commission's (NERBC) Task Force on Flood Plain Management which is composed of officials from member state and federal agencies in New England associated with the management of flood plains. The comments assembled herein are derived from activities conducted by the task force, including the sponsorship of a review workshop held in Boston on January 21, 1975, and as such, are representative of the interests and concerns expressed by the task force. A list of contributors and participants in the task force's activities is attached.

GENERAL COMMENTS

1. Tone of the Draft EIS - Members of NERBC's task force have spent a great deal of time and effort attempting to identify what are the legitimate program objectives. Of great help to them in this endeavor has been Senate Report No. 93-583 as reproduced in HUD's booklet, "National Flood Insurance Program". Particularly illuminating are excerpts from pages 10 and 11, which state:

"... the expanded flood insurance program is specifically intended as a substitute and eventual replacement for Federal disaster relief for flood occurrences, so that property owners not only will be more aware of flood hazards and will be permitted to contribute to their own protection, but also so that they will be more fully indemnified (without having to repay a Federal disaster loan) when the inevitable flood loss actually occurs. "

"A number of witnesses seemed to be under the impression that participation in the flood insurance program means that no construction can take place in flood-prone areas. Such is not the case. Not only does the program not deny the community the right to utilize its flood plains to the extent reasonably necessary, but FIA has made clear that if new construction is properly elevated (or alternatively, flood-proofed, in the case of nonresidential properties) then the actuarial flood insurance rates that would be charged would not be significantly higher than subsidized rates."

Clearly, the Senate Report does not highlight environmental considerations, but rather establishes the program as a mechanism for:

- (1) Shifting the responsibility for disaster relief from the federal government to an indemnification process.
- (2) Minimizing the hazards of flooding to people and new property.

Nowhere in the Act or the Senate Report is there any mention made of benefits to the environment as being of primary importance. However, the draft EIS conveys an opposite impression by the manner in which it is written. This is indeed unfortunate, as the draft EIS could very well rekindle or reinforce these misunderstandings. It is therefore suggested that the draft EIS be revised to express less of a need for justifying the program on the basis of environmental benefits, and more of an unbiased sense of what the environmental impacts are likely to be. This is elaborated on later under Specific Comments.

2. Opportunity and Awareness - The environmental significance of both the Act and the promulgated regulations, as seen by the task force, is the creation of a mechanism for alerting people to the need for maintaining the basic function of the flood plain - allowing for movement of high volumes of water. The provision of detailed information on flood hazard areas could produce very important positive environmental benefits. Availability of this information could, at the very least, allow people to take cognizance of environmental trade offs (over and above those trade offs considered for safety purposes) which are related to development in flood hazard areas. By having this information, the opportunity is presented for local regulation to go beyond safety standards. This has already been demonstrated in that some communities have elected to go beyond basic HUD requirements to the point that local environmental concerns are incorporated in regulations. The impetus provided by the program has made these actions possible and should be

emphasized, but not as an absolute in that this will always be a product of the program. Just the reverse could occur, should a community decide that economic development outweighs environmental enhancement, which would be perfectly acceptable as long as program safety requirements are met. Both of these extremes in terms of environmental impact should be reflected in the EIS.

3. Program Acceleration Through Emergency Provisions - The EIS does not authentically reflect the environmental difficulties local communities are experiencing because of the manner chosen for accelerating the program on a nation wide basis. The 1969 amendments to the Act provide HUD Administrator with emergency implementation provisions. However, many contend that the regulations subsequently promulgated do not follow the intent of Congress in passing this amendment. The main concern is that new construction is allowed to be eligible for subsidized insurance without counterpart locational restrictions which the regular program requires. Most see this not only as self-defeating, but actually promoting unwise development in hazard areas by acting as a stimulant to growth.

Thus, a number of points made in the EIS under II (A) - "Impacts on Natural Environment" are considered misleading because of the manner in which the emergency provisions of the Act are being administered. Specific reference is made to items 3 and 5. It is the task force's understanding that HUD considers the emergency provisions as being temporary until Flood Insurance Rate Maps are prepared. However, experience has shown that the interim period until these are provided can be quite extensive (5 years, with some estimates of up to 10 years) because of the backlog of mapping work which HUD now has, and this backlog is increasing rapidly. This creates a major loophole (especially with regard to locational aspects) for development to occur in hazard areas with minimal regulation while being subsidized by the federal government for the risks being taken.

The region has experienced a number of situations where the regulations covering the emergency provisions have created very adverse effects on the natural environment. The proposed regulations do not provide for a correction of this problem, and the EIS should be changed to show that this is the case.

4. Floodplain Storage Capabilities - There are two oversights on this subject - (1) the impacts from allowing construction and fill under the emergency program, and (2) the premise that some fill outside the flood way will not cause major adverse effects. Both of these concerns relate to an issue that has been overlooked -- floodplain management is broader than a community by community approach, by which extensive development within one part of the floodplain could negate natural valley storage capability

and adversely alter the flood flows in downstream and upstream communities. Extensive environmental impact does occur from this practice, which is provided for under the regulations, and should be so noted.

5. Cost of Insurance - Over the long term, the cost of insurance may not appear to be a reasonable investment in terms of the risk involved. The EIS does not reflect the fact that insurance is a better buy because of subsidies in the higher risk zones, thereby raising the question whether development of higher risk zones might not be preferred on the basis of immediate investment costs over a short time frame. Subsidies on insurance may be attractive enough to outweigh costs of meeting new construction standards.

6. Variances - There are two concerns expressed on the rule-making change to allow for variances. First, the assumed purpose of the Act is to prevent continued development or expansion in high risk areas. To assume that the owner of an undeveloped parcel has the same right to use his land as his neighbor with an existing structure, regardless of added hazards created, and then to provide insurance to cover the risk associated with exercising this right, could promote extensive additional development which would result in severe environmental impacts. Second, there is concern that the variance principle might be used as a means of allowing extensive reinvestment after an area has received flood damages. The draft EIS should note that less than stringent application of these regulations in the form of variances would perpetrate adverse environmental effects.

7. Other Issues - Several other issues concerning the regulations should be considered for appropriateness in the EIS. Among these are, (a) economic well-being of a community over the long term in accepting the risk of allowing major industry to locate in a flood hazard area, (b) clear, concise policy on human habitation in flood hazard areas such as high-rise units, and (c) the obligation of developers to assume long term risks.

SPECIFIC COMMENTS

| | | |
|-----------|----------|--|
| pages 8-9 | (II A-1) | Agreement with statement, except fill is still allowed which will have an adverse impact. |
| | (II A-2) | This only pertains to the floodway portion. |
| | (II A-3) | Last sentence cannot be substantiated, as the Act does not distinguish between structural and non-structural uses. |

pages 8 - 9 (II A-4)

There is an unresolved constitutional question with prohibiting building altogether, which the statement does not recognize.

(II-5)

The program does provide incentive for building under the emergency provisions, and does not discourage building under regular program. Taking a risk really depends on whether added construction costs and subsidized insurance in high risk zones can be balanced against economic gain realized from developing a favorable location (downtown or highway interchange area).

(II-6)

There is equal amount of false security associated with 100 year flood plain demarcations as there is with local protection works.

+

(II-7)

This statement is erroneous. Wetlands are not necessarily associated with floodplains. Also any fill such as allowed and encouraged under the regulations will severely impact or destroy those wetlands which are within floodplains.

(II-8)

To the contrary, the regulations could very well increase the use of the floodplain. Nothing in the Act denotes the concept of environmental preservation.

(II-10)

Same as II-8, plus the fact that fill is allowed and encouraged.

page 10 - Item 2 -

Allowable floodplain development could have serious effects upstream or downstream, as the natural storage capacity is reduced in a cumulative fashion among communities.

page 11 - Item 1 -

The comment on requiring building permits is too obscure. As noted earlier, this is an extremely important opportunity attributable to the regulations.

page 11 - Item 3 -

The assertion on rebuilding cannot be substantiated, it is only speculative.

page 12 - Item 9 -

Mention should be made of the inherent enforcement weakness communities now face because of the emergency provisions included in the Act and regulations.

+

page 13 - Item 2 - This statement needs to be rephrased in light of above comments.

page 17 - Arguments presented here on intent of Congress only reinforce general comments earlier.

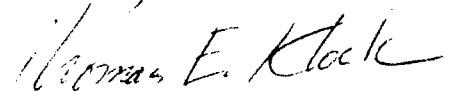
page 18 - Elimination of the emergency provisions as part of the regulations is an alternative which should be dealt with. This is of timely importance, as the provisions are due to expire December 31st of this year.

Page 19 (IV A-1) - Earlier comments are to the effect that the reverse could just as easily be the case.

page 21 - The entire page is written as a program justification, rather than dealing with irreversible commitments, such as those mentioned earlier.

The task force is very concerned about the future of the national flood insurance program, especially since the combined feeling is that the program offers management opportunities which must not be weakened or lost. There have been problems in administering the Act's provisions, and the proposed regulations do go a long way towards resolving these. However, in expressing the above comments, the task force wishes to draw attention to other issues which have not been sufficiently addressed and need further attention. These comments should be construed as suggestions which may lead to making the program more viable on a federal level, as well as more responsive to state and local interests.

Very truly yours,



Thomas E. Klock, Chairman
NERBC Task Force on Flood
Plain Management

enclosure
TEK/pmg

Task Force Members

Charles Boothby
John Cerutti
Emerson Chandler
Stanley R. Davis
Charles Dingle
Patrick Fingliss
Dave Harrison
Charles Hopkins
Carl Johnson
Kenneth Johnson
Robert McIntosh
Tom Melone
David Neville
Stephen Tibbetts
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Maine
Vermont
Massachusetts
Dept. of Transportation
Soil Conservation Service
Rhode Island
NERBC
National Weather Service
U. S. Geological Survey
U. S. Forest Service
Corps of Engineers
Dept. of Housing & Urban Development
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Judy Holloway
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New England Conservation Law Foundation
NERBC
Mass. Dept. of Community Affairs
Mass. Water Resources Commission
HUD, Regional Office
Mass. Civil Defense Agency
Charles River Watershed Association
Corps of Engineers
CRBP, SAG
CRBP, SAG
Nashua River Program
NERBC



OHIO RIVER BASIN COMMISSION

Suite 208-20
Cincinnati, Ohio 45202

36 East Fourth Street
513/684-3831 (FTS)

January 24, 1975

Mr. David O. Meeker, Jr. FAIA
Assistant Secretary
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Mr. Meeker:

Thank you for your letter of 13 December 1974 inviting comments of the Ohio River Basin Commission on the Draft Environmental Impact Statement (EIS) for the Land Management and Use Regulations of the National Flood Insurance Programs. In my opinion, the EIS has been properly coordinated with the Commission members.

The Ohio River Basin Commission staff has reviewed the draft EIS and finds no indication that the proposed action would not be compatible with the ORBC Comprehensive Coordinated Joint Plan as it exists today.

The Commission looks forward to a continuing cooperative effort with your Department and appreciates your action in keeping us well informed.

Sincerely,

Fred E. Morr
Chairman

cc: George J. Vavoulis
5 to Council on Environmental
Quality



TENNESSEE VALLEY AUTHORITY

CHATTANOOGA, TENNESSEE 37401

January 28, 1975

Mr. Richard H. Broun
Environmental Clearance Officer
Room 8208
Department of Housing
and Urban Development
Washington, D. C. 20410

Dear Mr. Broun:

This is in response to the December 13, 1974, letter from Mr. David O. Meeker, Jr., requesting our review of and comments on the Draft Environmental Impact Statement for the Land Management and Use Regulations of the National Flood Insurance Program. We have some specific comments which are enclosed for your consideration. In general, however, we agree with the proposed rules and believe that the statement makes an excellent case for the National Flood Insurance Program. We also feel that the proposed rules are compatible with Section 1302(c) of the National Flood Insurance Act of 1968 which stipulates that "... the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management and, to this end, it is the sense of Congress that within two years following the effective date of this title, the President should transmit to the Congress for its consideration any further proposals necessary for such a unified program."

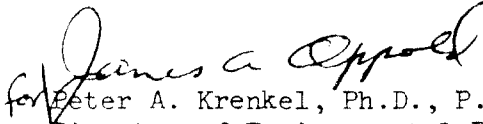
TVA endorses the philosophy of flood insurance and has been advocating a national flood insurance program for more than a decade. The present regulations contain requirements for flood plain management in communities throughout the nation based on the concept developed in a program started by TVA in 1953. Our experience has demonstrated the practicability and merits of a cooperative Federal-state-local program based on local management through zoning ordinances and other devices to preserve open-use floodways and to require minimum building levels. The success of the original TVA program and our subsequent actions in cooperation with three other Federal agencies provided a basis for Congressional interest and action which led to the Federal Flood Control Act of 1968. Because TVA had sole responsibility for flood hazard

Mr. Richard H. Broun

January 28, 1975

identification in the period when the concept was being developed, it was logical for us to assume sole responsibility for insurance rate studies for the Tennessee Valley area. Because of the continuing success of the program demonstrated in this area, TVA fully endorses the national program as described in the draft environmental statement.

Sincerely yours,


for Peter A. Krenkel, Ph.D., P.E.
Director of Environmental Planning

Enclosure

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT
FLOOD PLAIN MANAGEMENT REGULATIONS OF THE
NATIONAL FLOOD INSURANCE PROGRAM

1. Page 4, Part I, Variance and Exception Procedures. Item 1)a reads as follows: "1) Individual variances may be approved if they are: a. for new structures to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection elevation." This is followed by a statement, "Such variances are issued upon a showing that failures to grant the variance would result in exceptional hardship to the applicant, and that the issuance of the variance will not pose a threat to public safety."

There is a need for a provision of this general type and undoubtedly some type of variance procedure will have to be included. However, as it presently stands, this subsection will make it virtually impossible to eliminate the flood hazard in certain areas by the process of attrition and will in fact permit undesirable utilization of unoccupied land within flood hazard areas. It is unlikely that the safeguard procedure in the form of a deed provision or title record will have any real value. In this same section on page 5, there is the matter of exceptions for storm cellars. In many parts of the country storm cellars are very necessary and certainly the National Flood Insurance Program should not operate to prevent their construction or use. However, this matter might be considered. In a newly developing area, it would seem unwise to permit the construction of storm cellars below the level of the 100-year flood. It is quite possible that the same storm which requires the use of the storm cellars will be accompanied by rainfall which could produce a 100-year flood. Therefore, the storm cellar could become a death trap.

2. Page 6, Appeals Procedure, item 3 states: "FIA is considering instituting an appeals procedure whereby individuals on the fringe of the flood hazard areas could dispute the boundary as drawn by FIA." It should be noted that to contest the boundary of a flood hazard area requires engineering expertise. This is only obtainable at a price. The question might be raised as to whether FIA has given any consideration to how the necessary data to support a contention that a boundary should be changed will be generated. A small property owner could very easily be saddled with an almost intolerable financial burden should a line be erroneously drawn through his property.
3. Page 8, Part IIA, Probable Impact of the Proposed Regulations, under item 3, the term "environmentally clean" is used to describe agricultural and recreational activities. It does not necessarily follow that agricultural operations or recreation developments are of themselves environmentally clean. Certain agricultural operations are capable of producing a heavy pollution load, and this is also true of recreation developments if they receive very heavy use.
4. Page 16, Part IIB, Probable Adverse Environmental Effects Which Cannot Be Avoided, under item 1, the statement is made that "It is the policy of FIA to encourage elevation by piling instead of by fill. As was stated previously, the use of fill is prohibited in certain high hazard areas." This may or may not be beneficial. Piling for example is much more subject to corrosion, rot, and other forms of deterioration, thus a structure erected on piling could collapse. It is most likely that this collapse would take place at a time when floodwaters are exerting pressure on the foundation. Fill, on the other hand, if properly placed and protected rarely fails.

5. Page 17, Part III, Alternatives to the Proposed Action, under item A1, line 5, the word "midpoint" could be misinterpreted. We suggest substituting "compromise" to more accurately represent the intended meaning.

PPBr
1-23-75

14

NATIONAL CAPITAL PLANNING COMMISSION

WASHINGTON, D.C. 20576

NCPC Files Nos. 0735 & 1200

FEB 5 1975

Mr. Richard H. Broun
Environmental Clearance Officer
Department of Housing & Urban Development
Washington, D. C. 20410

Re: Draft Environmental Impact Statement for Land
Management and Use Regulations of the National
Flood Insurance Programs

Dear Mr. Broun:

We are in receipt of the Draft Environmental Impact Statement described above on which the Commission's review and comments have been requested.

Since the passage of the Capper Cramton Act in 1930, the Commission has been interested in and involved in watershed protection and stream valley park acquisitions in the National Capital Region. Within this context, the Draft Statement has been reviewed and evaluated by the staff in terms of its impact on Federal land and/or interests in the National Capital pursuant to the National Capital Planning Act of 1952, as amended by the District of Columbia Self-Government and Governmental Reorganization Act.

As a result of this review, we believe that the adoption of the revised regulations will be in the Federal interest in the National Capital Region and have no further comments.

Thank you for the opportunity to review the Draft Statement.

Sincerely yours,



Charles H. Conrad
Executive Director



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OFFICE BUILDING

HARTFORD, CONNECTICUT 06115



February 14, 1975

Office of Flood Insurance
Federal Insurance Administration
U. S. Department of Housing & Urban Development
451 7th Street, S. W.
Washington, D. C. 20410

Re: Draft EIS of the "Flood Plain Management
Regulations of the National Flood
Insurance Program"

Dear Sirs:

Our office has reviewed the subject EIS, dated November, 1974, as prepared by your department and would like to make the following comments on the EIS and the regulations.

reg 1. The regulations do not clearly indicate how existing trailer parks are to be regulated. Town regulations typically apply to the land and not the trailers. The regulations should require trailer park owners to submit for permits to place new trailers on the lot or to replace existing trailers upon their removal. The existing regulations will not prevent the indiscriminant placement of trailers in flood hazard areas as no building permit or town executive action is required for this type of encroachment at this time. ✓

2. Regarding Page 4, "Variance and Exception Procedures":

(a) Part 1a is unacceptable. This would permit substantial construction of resort housing in coastal areas or along riverways where subdivision plans have been approved but not completed. The law should require that approved but not constructed subdivision plans be reviewed and re-designed as necessary to achieve compliance with the Flood Insurance Act. One might also surmise that the environmental consequences of half acre lot subdivisions is negative as these projects leave little or no open space.

(b) Legitimate variances for flood-proofing will be given only if the regulations spell out what constitutes legitimate flood-proofing, such as structural design of floor slabs and walls to prevent failure due to uplift or horizontal hydrostatic pressures, dynamic loadings to be con-

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FEDERAL OFFICE

sidered for the design of above ground structures, placement of utilities and machinery, etc. How will the FIA know if a permittee alters the flood hazard portion of the structure after completion of construction?

3. The EIS should reflect some of the technological problems with the program. For instance, if a significant flood control program is performed on a watershed (P.L. 566 projects, Army Corps projects, State projects) it will be necessary to re-perform the Type 15 study to define the regulated property. Selected replacement of bridges or removal of obstructions could have a similar effect.

Also, many of the studies have been done using stream gaging data to define design discharges. It has been shown that development of watersheds will result in significant reductions of return period for discharges of given magnitude. Thus, as watersheds are developed and storm drains replace natural drainage, the Type 15 study design discharges will be representative of storms more common than anticipated by the insurance program. Another hydraulic factor given no consideration by the Type 15 studies is that the large amounts of flood-fringe filling permitted may result in significant changes to initial inflow - outflow hydrograph relationships for a given reach of river. By this I mean attenuation in peak and time to peak may be significantly altered by loss of natural valley storage.

4. Regarding Page 9, "Impact on Natural Environment", item 7:

The necessity to raise finished floors one foot above design water surfaces will promote the placement of fill in floodplains and the obliteration of wetlands in the floodfringe area. The current practice of constructing on grade, while hazardous from the flooding standpoint, does not require the extent of filling that will be necessary to comply with regulations.

Also, many wetlands are fed by small watersheds and are not designated as significant flood hazard areas. Thus many wetlands are not subject to these regulations. Thus item 7 is too presumptive and should be rewritten.

5. Regarding Page 9 and 10, item 1(a) and (b):

The regulations may increase sediment problems as they currently exist in streams or in the areas of the floodfringe. In many cases, fill will be used to achieve compliance with the Flood Insurance Act. Thus the amount of sediment which will reach streams during the construction phase will be greater after regulation than pre-regulation. Also, the loss of conveyance by filling and occupying the floodfringe will result in higher stream velocities and thus greater stream bank and channel bottom erosion during flooding.

Dynamic forces are increased by [floodway] filling. The regulations will eliminate construction at grade and thus more filling will occur than currently performed.

6. Regarding Page 16, "Probable Adverse Effects", the following adverse effect should be added to the list:

The design storm used to establish the regulatory water surface elevation is a storm whose probability of being equalled or exceeded is 1%. Thus the regulatory aspects of the insurance program will not eliminate the hazard of floods. In fact, it may provide false assurance that compliance with the law will make usage of the flood-fringe as safe a proposition as usage of upland land. Part of the justification for the insurance program is that structural flood control has not prevented unwise use of the floodplains themselves, because structural controls have inspired false confidence in the ability of structures to prevent floods. This same false confidence may be generated by the insurance program and result in more rapid development of flood-fringes than would normally occur.

7. There are two types of undesirable encroachments into floodplains--excessive filling resulting in the obstruction of the floodway; construction at grade inside the limits of flooding. Most of your comments are based on preventing the first type of encroachment. The environmental impact of eliminating the second type of encroachment may well be negative, although it is a significant cause of damage due to flooding and its elimination should be a net social benefit. I would suggest you examine the Environmental Impact Statement and more clearly identify how the regulations will achieve the stated benefits.
8. The regulations do not indicate uses permitted as of right. Attached is a copy of Connecticut's Inland Wetlands regulations with the section on "Uses permitted as of right" marked off. H. U. D. might consider providing a section in its regulations of a modified sort to spell out those operations which are considered excluded from the regulation.

REB's

Sincerely,

Joseph O Elmer (SMT)

Dr. Joseph O. Elmer
Senior Civil Engineer
Water and Related Resources

JOE/n

Enclosure

ADMINISTRATIVE REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection

Sec. 22a-39-1. Title and authority

These regulations shall be known as the "Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection."

Sec. 22a-39-2. Definitions

Definitions, as used in these regulations:

1 "The Act" means Sections 22a-36 to 45 inclusive of the General Statutes, as amended;

2 "Commissioner" means the Commissioner of the Department of Environmental Protection;

3 "Department" means the Department of Environmental Protection;

4 "Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or emit;

5 "Discharge" means the emission of any water, substance or material into waters of the State of Connecticut whether or not such substance causes pollution;

6 "License" means the whole or any part of a permit, certificate of approval or similar form of permission which may be required of any person by the provisions of these regulations or the Act;

7 "Local Inland Wetlands Agency" means the agency empowered by municipal ordinance to implement and administer the Act and having jurisdiction over the inland wetlands and water courses of such municipality;

8 "Material" means any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment aggregate, land, gravel, clay, bog, mud, debris, sand, refuse, or waste;

9 "Person" means any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including municipal corporations, government agencies or subdivisions thereof;

10 "Pollution" means any harmful thermal effect or the contamination or rendering unclean or impure of any wetlands or water courses of the State of Connecticut by reason of any waste or other materials discharged or deposited therein by any public or private sewer, or otherwise, so as directly or indirectly to come in contact with any wetlands or water courses;

11 "Regulated activity" means any operation within or use of a wetland or water course as listed in Section 4-2 of these regulations;

12 "Regulated Area" means any wetland or water course as defined in these regulations;

13 "Remove" includes, but shall not be limited to drain, excavate, mine, dig, dredge, suck, bulldoze, drag-line, or blast;

14. "Rendering unclean or impure" means any alteration of the physical, chemical or biological properties of any wetlands or water courses of the State of Connecticut, including but not limited to change in color, odor, turbidity or taste;

15. "Significant impact or major effect" means:

a. Any activity involving a deposition of material which will or may have a substantial adverse effect on the regulated area or on another part of the inland wetland or water course system or

b. Any activity involving a removal of material which will or may have a substantial adverse effect on the regulated area or on another part of the inland wetland or water course system or

c. Any activity which substantially changes the natural channel or may inhibit the natural dynamics of a water course system or

d. Any activity which substantially diminishes the natural capacity of an inland wetland or water course to support desirable biological life, prevent flooding, supply water, assimilate waste, facilitate drainage, and/or provide recreation and open space;

16. "Soil Scientist" means an individual duly qualified in accordance with standards set by the United States Civil Service Commission;

17 "Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any wetlands or water courses of the State of Connecticut;

18. "Water Courses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, public or private, which are contained within, flow through or border upon the State of Connecticut or any portion thereof, not regulated pursuant to Sections 22-7h to 22-7o inclusive of the General Statutes, as amended;

19. "Wetlands" means land, including submerged land, not regulated pursuant to Sections 22-7h to 22-7o inclusive of the General Statutes, as amended, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and flood plain by the National Cooperative Soil Survey (as may be amended from time to time) of the U.S. Soil Conservation Service.

Sec. 22a-39-3. Permitted operations and uses

Sec. 22a-39-3.1. Uses permitted as of right

The following operations and uses shall be permitted in inland wetlands and water courses, as of right:

a. Grazing, farming, nurseries, gardening, and harvesting of crops and farm ponds of three acres or less;

b. A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, providing the permit has been issued or the subdivision has been approved as of the effective date of promulgation of municipal regulations pursuant to the Act or in the absence thereof, as of the effective date of these regulations, whichever occurs first;

c. Boat anchorage or mooring;

d. Uses incidental for the enjoyment and maintenance of a residential property, such property defined as the largest minimum residential lot site permitted anywhere in the municipality, provided that in any town where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres. Such incidental uses shall include maintenance of existing structures and landscaping, but shall not include removal or deposition of substantial amounts of material from or into a wetland or water course, or diversion or alteration of a water course;

e. Construction and operation, by water companies as defined in Section 16-1 of the General Statutes, or by municipal water supply systems as provided for in Chap-

ter 102 of the General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies, except as provided in Sections 25-110 and 25-112 of the General Statutes, as amended.

Sec. 22a-39-3.2. Uses permitted where indigenous character of land is not disturbed

The following operations and uses shall be permitted, as nonregulated uses in wetlands and water courses provided they do not disturb the natural and indigenous character of the land. "Disturbing the natural and indigenous character of the land" means that the activity will significantly disturb the inland wetland or water course by reason of removal or deposition of material, will cause the alteration or obstruction of water flow, or will result in the pollution of the wetland or water course.

a. Conservation of soil, vegetation, water, fish, shellfish and wildlife;

b. Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.

Sec. 22a-39-4. Licensing of regulated activities within regulated areas

Sec. 22a-39-4.1. Regulated activities to be licensed

Subject to the provisions of Sections 3, 4.3 and 4.4 hereof, regulated activities affecting wetlands and water courses within the State of Connecticut are prohibited except as they may be licensed 1) by the local inland wetlands agency, or 2) after June 30, 1974 by the Commissioner in the event that no local inland wetlands agency of competent jurisdiction is in operation.

Sec. 22a-39-4.2. Regulated activities

The local inland wetlands agency or the Commissioner shall regulate only those activities which:

- a. remove material from,
- b. deposit material in,
- c. obstruct,
- d. construct,
- e. alter, or
- f. pollute

inland wetlands and water courses.

Sec. 22a-39-4.3.a. Activities to be regulated solely by the commissioner

The Commissioner shall regulate the following activities to the exclusion of the local inland wetlands agencies:

- (1) Construction or modification of any dam, pursuant to Sections 25-110 and 25-112 of the General Statutes, as amended;
- (2) Construction or placement of any obstruction within channel encroachment lines, pursuant to Sections 25-4a to g of the General Statutes, as amended;
- (3) Construction or placement of any structure or obstruction within tidal, coastal and navigable waters, pursuant to Sections 25-7b to e of the General Statutes, as amended;
- (4) Diversion of water for public and domestic use, pursuant to Sections 25-8a to e of the General Statutes, as amended;
- (5) Discharges into waters of the state, pursuant to Section 25-54i of the General Statutes, as amended.

Sec. 22a-39-4.3.b. Submission and processing of applications

Each application to undertake an activity specified in Section 4.3.a of these regulations shall be submitted to

the Commissioner and processed in accordance with the statutes, regulations and procedures which are applicable to the proposed activity.

Sec. 22a-39-4.3.c. Submission of application to local wetlands agency

Except as provided in Section 4.4 of these regulations, if any application submitted pursuant to Section 4.3.b of these regulations includes a regulated activity as defined by Section 4.2 of these regulations, the Commissioner shall direct the applicant to submit such portion of the application to the appropriate local inland wetlands agency.

Sec. 22a-39-4.3.d. Local agency to direct certain applicants to commissioner

If a local inland wetlands agency receives an application to undertake an activity specified in Section 4.3.a of these regulations, the local inland wetlands agency shall in writing direct the applicant to apply to the Commissioner for the required license. The local wetlands agency may, in its discretion, review the remaining portions of the application, or may deem such application incomplete until the Commissioner issues a final decision concerning any related application subject to his jurisdiction.

Sec. 22a-39-4.3.e. Permits granted by commissioner to be binding on local agency

Any permit granted or denied by the Commissioner shall be binding upon the local inland wetlands agencies as to matters within the Commissioner's jurisdiction.

Sec. 22a-39-4.3.f. Commissioner may consult local agency

Upon receipt of any application to conduct an activity which will affect a wetland or water course, the Commissioner may submit a copy of the application to the local inland wetlands agency in any affected municipality for review and comment. The failure to receive a written reply shall not delay a public hearing or prejudice the final decision.

Sec. 22a-39-4.4. Exclusive jurisdiction of commissioner

The Commissioner shall license and maintain exclusive jurisdiction over regulated activities as defined in Section 4.2 of these regulations to be undertaken by any department, agency or instrumentality of the State of Connecticut.

Sec. 22a-39-4.5. Issuance of permits by commissioner before July 1, 1974

After the effective date of these Regulations, but before July 1, 1974, the Commissioner may issue such permits as he deems necessary to implement the purposes of the Act and of these Regulations.

Sec. 22a-39-4.6. Boundary maps to be established

The local inland wetlands agency or the Commissioner shall establish or amend area boundary maps in accordance with the procedures of subsections f and g of Section 22a-39 of the General Statutes. Such maps shall be on file in the offices of the municipal clerks and at the Department, and titled "Designated Inland Wetlands and Water Courses of the (City or town) of (Name of Municipality)."

Sec. 22a-39-4.7. Disputation of designations

Wetlands and Watercourses — Inland wetlands and water courses are defined in Sections 2 (18) and 2 (19) of these regulations.

a. If any person disputes the designation or the failure to designate any wetland or water course as a regulated area, such person may be required to produce such

ter 102 of the General Statutes, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies, except as provided in Sections 25-110 and 25-112 of the General Statutes, as amended.

Sec. 22a-39-3.2. Uses permitted where indigenous character of land is not disturbed

The following operations and uses shall be permitted, as nonregulated uses in wetlands and water courses provided they do not disturb the natural and indigenous character of the land. "Disturbing the natural and indigenous character of the land" means that the activity will significantly disturb the inland wetland or water course by reason of removal or deposition of material, will cause the alteration or obstruction of water flow, or will result in the pollution of the wetland or water course.

a. Conservation of soil, vegetation, water, fish, shellfish and wildlife;

b. Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing where otherwise legally permitted and regulated.

Sec. 22a-39-4. Licensing of regulated activities within regulated areas

Sec. 22a-39-4.1. Regulated activities to be licensed

Subject to the provisions of Sections 3, 4.3 and 4.4 hereof, regulated activities affecting wetlands and water courses within the State of Connecticut are prohibited except as they may be licensed 1) by the local inland wetlands agency, or 2) after June 30, 1974 by the Commissioner in the event that no local inland wetlands agency of competent jurisdiction is in operation.

Sec. 22a-39-4.2. Regulated activities

The local inland wetlands agency or the Commissioner shall regulate only those activities which:

- a. remove material from,
- b. deposit material in,
- c. obstruct,
- d. construct,
- e. alter, or
- f. pollute

inland wetlands and water courses.

Sec. 22a-39-4.3.a. Activities to be regulated solely by the commissioner

The Commissioner shall regulate the following activities to the exclusion of the local inland wetlands agencies:

- (1) Construction or modification of any dam, pursuant to Sections 25-110 and 25-112 of the General Statutes, as amended;
- (2) Construction or placement of any obstruction within channel encroachment lines, pursuant to Sections 25-4a to g of the General Statutes, as amended;
- (3) Construction or placement of any structure or obstruction within tidal, coastal and navigable waters, pursuant to Sections 25-7b to e of the General Statutes, as amended;
- (4) Diversion of water for public and domestic use, pursuant to Sections 25-8a to e of the General Statutes, as amended;
- (5) Discharges into waters of the state, pursuant to Section 25-54i of the General Statutes, as amended.

Sec. 22a-39-4.3.b. Submission and processing of applications

Each application to undertake an activity specified in Section 4.3.a of these regulations shall be submitted to

the Commissioner and processed in accordance with the statutes, regulations and procedures which are applicable to the proposed activity.

Sec. 22a-39-4.3.c. Submission of application to local wetlands agency

Except as provided in Section 4.4 of these regulations, if any application submitted pursuant to Section 4.3.b of these regulations includes a regulated activity as defined by Section 4.2 of these regulations, the Commissioner shall direct the applicant to submit such portion of the application to the appropriate local inland wetlands agency.

Sec. 22a-39-4.3.d. Local agency to direct certain applicants to commissioner

If a local inland wetlands agency receives an application to undertake an activity specified in Section 4.3.a of these regulations, the local inland wetlands agency shall in writing direct the applicant to apply to the Commissioner for the required license. The local wetlands agency may, in its discretion, review the remaining portions of the application, or may deem such application incomplete until the Commissioner issues a final decision concerning any related application subject to his jurisdiction.

Sec. 22a-39-4.3.e. Permits granted by commissioner to be binding on local agency

Any permit granted or denied by the Commissioner shall be binding upon the local inland wetlands agencies as to matters within the Commissioner's jurisdiction.

Sec. 22a-39-4.3.f. Commissioner may consult local agency

Upon receipt of any application to conduct an activity which will affect a wetland or water course, the Commissioner may submit a copy of the application to the local inland wetlands agency in any affected municipality for review and comment. The failure to receive a written reply shall not delay a public hearing or prejudice the final decision.

Sec. 22a-39-4.4. Exclusive jurisdiction of commissioner

The Commissioner shall license and maintain exclusive jurisdiction over regulated activities as defined in Section 4.2 of these regulations to be undertaken by any department, agency or instrumentality of the State of Connecticut.

Sec. 22a-39-4.5. Issuance of permits by commissioner before July 1, 1974

After the effective date of these Regulations, but before July 1, 1974, the Commissioner may issue such permits as he deems necessary to implement the purposes of the Act and of these Regulations.

Sec. 22a-39-4.6. Boundary maps to be established

The local inland wetlands agency or the Commissioner shall establish or amend area boundary maps in accordance with the procedures of subsections f and g of Section 22a-39 of the General Statutes. Such maps shall be on file in the offices of the municipal clerks and at the Department, and titled "Designated Inland Wetlands and Water Courses of the (City or town) of (Name of Municipality)."

Sec. 22a-39-4.7. Disputation of designations

Wetlands and Watercourses — Inland wetlands and water courses are defined in Sections 2 (18) and 2 (19) of these regulations.

a. If any person disputes the designation or the failure to designate any wetland or water course as a regulated area, such person may be required to produce such

Sec. 22a-39-5.7.b. Review by conservation commission

The Commissioner may submit one copy of the application to the Conservation Commission of the municipality wherein the wetland is located for review. Such submission shall be made upon receipt of a complete application, but failure to receive a written reply from the Conservation Commission shall not delay a public hearing or prejudice the final decision.

Sec. 22a-39-5.7.c. Review by conservation or planning commissions of adjoining municipality

The Commissioner may submit one copy of the application to the Conservation Commission or Planning Commission in any municipality whose border lies within five hundred (500) feet of any wetland or water course that may be affected by the proposed activity. Such submission shall be made upon receipt of a complete application, but failure to receive a written reply shall not delay a public hearing or prejudice the final decision.

Sec. 22a-39-6. Rendering a decision

Sec. 22a-39-6.1. Considerations for decision

The Commissioner shall, consistent with applicable requirements of Sections 4-166 to 185 of the General Statutes, as amended, consider the following in making his final decision on a permit application:

a. All evidence offered at any public hearing;

b. Any reports from other commissions and or federal or state agencies, including the Soil and Water Conservation District and the Connecticut Department of Environmental Protection;

c. Additional requested information;

d. All relevant facts and circumstances, including but not limited to the following:

(i) The environmental impact of the proposed action, including the effects of the inland wetland's and water course's natural capacity to support desirable biological life, to prevent flooding, to supply water, to control sediment, to facilitate drainage, and to promote public health and safety.

(ii) The alternatives to the proposed action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity. This should include but is not limited to the alternative of taking no action, or postponing action pending further study; the alternative of requiring actions of different nature which would provide similar benefits with different environmental impacts, such as using a different location for the activity.

(iii) The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity, including consideration of the extent to which the proposed activity involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses future options.

(iv) Irreversible and irretrievable commitments of resources which would be involved in the proposed activity. This requires recognition that the inland wetlands and water courses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, and removal of material, by the diversion or obstruction of waterflow, and by the erection of structures and other uses.

(v) The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which would be caused or threatened. This

includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and other beneficial aquatic organisms, wildlife and vegetation; the dangers of flooding and pollution; and destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and water courses.

(vi) The suitability of such action to the area for which it is proposed. This requires the agency to balance the need for the economic growth of the state and the use of its land, with the need to protect its environment and ecology for the people of the state and the benefit of generations yet unborn.

c. Measures which would mitigate the impact of the proposed activity and may be imposed as conditions of the permit. Such measures include the availability of further technical improvements or safeguards which could feasibly be added to the plan or action to avoid the reduction of the wetland's or water course's natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilate wastes, facilitate drainage, and provide recreation and open space.

Sec. 22a-39-6.2.a. When commissioner must render decision

In the absence of a public hearing, the Commissioner shall render a final decision within ninety (90) days from the receipt of a complete application. The Commissioner shall notify the applicant by certified mail of his decision within ten (10) days of the date of the decision and the Commissioner shall cause notice of his decision to be published in a newspaper having a general circulation in the municipality wherein the regulated area lies.

Sec. 22a-39-6.2.b. When commissioner must render decision after public hearing

Action shall be taken on applications within forty-five (45) days after certification of a transcript of the public hearing. The Commissioner shall inform the applicant and any other parties of his decision in granting a permit with or without conditions, or in denying a permit, by certified mail within ten (10) days of the date of such decision.

Sec. 22a-39-7. The permit

Sec. 22a-39-7.1. Written opinion required

At the time of granting a permit, granting a permit with conditions or limitations, or denying a permit following a public hearing, the Commissioner shall issue a written opinion presenting his reasons.

Sec. 22a-39-7.2. Modification and resubmission of denied application

The Commissioner may deny a permit with or without prejudice. If a permit is denied with prejudice, the application shall not be resubmitted for one year following the date of such denial. If a permit is denied without prejudice, the applicant may modify, amend or correct his proposal. The rejection of a modified proposal shall be equivalent to the denial of an application for the purposes of Section 10 of these regulations.

Sec. 22a-39-7.3. Modification of application granted with conditions

If a permit is granted with conditions or limitations, and the applicant disputes such conditions or limitations, he may modify, amend or correct his proposal. Rejection of a modified, amended or corrected proposal shall be equivalent to the denial of an application for the purposes of Section 10 of these regulations.

information as the local inland wetlands agency or the Commissioner deems necessary to permit an informed decision.

b. To meet the burden of proof for wetlands exemption under subsection (a), the petitioner may be directed to present documentation by a soil scientist that the wetland in question, or a portion of it, does not have a soil type classified by the National Cooperative Soils Survey as poorly drained, very poorly drained, alluvial, or flood plain.

Sec. 22a-39-5. Application procedure

Sec. 22a-39-5.1.a. Where applications to be submitted

Any person wishing to carry out a regulated activity shall submit an application to the local inland wetlands agency. After June 30, 1974, if there is no such operating wetlands agency within the municipality, such person shall apply to the Commissioner.

Sec. 22a-39-5.1.b. Complete application

No application submitted to the Commissioner shall be deemed complete unless it shall be in such form and contain such information as the Commissioner deems necessary for a fair determination of the issues. The Commissioner shall inform all applicants of such necessary information.

Sec. 22a-39-5.1.c. Five copies of information required

Written information and maps required by the Commissioner shall be furnished in no fewer than five (5) copies.

Sec. 22a-39-5.2. Information required on applications

All applications to the Commissioner shall include the following information in writing on a form provided by him.

a. The applicant's name, home and business addresses, and telephone numbers;

b. The owner's name (if applicant is not the owner of the property), home and business addresses, telephone numbers, and written consent to the proposed activity set forth in the application;

c. Applicant's interest in the land;

d. The geographical location of the property which is to be affected by the proposed activity, including a description of the land in sufficient detail to allow identification of the properties on the Inland Wetlands and Water Courses Map;

e. Purpose and description of the proposed activity;

f. A site plan;

g. Names of adjacent property owners;

h. Required additional information.

Sec. 22a-39-5.3. Summary ruling

If the Commissioner finds that a proposed activity is a regulated activity not involving significant impact or major effect on the inland wetland or water course as defined in Section 2 of these regulations, he may allow the activity with or without conditions or limitations. The Commissioner, after full review of the considerations set forth in Sections 6.1.d through 6.1.h and other pertinent factors, shall issue a permit with or without conditions or limitations.

Sec. 22a-39-5.4. Plenary rulings

If the Commissioner finds that the activity applied for does or may involve a significant impact or major effect on a wetland or water course, he may request additional information which may include but is not limited to

a. **Site plan** — a map of the proposed use and the property which will be affected, drawn by a licensed surveyor, professional engineer, or professional architect, registered in the State of Connecticut or in an adjoining

state, or by such other person acceptable to the Commissioner. The map shall be at a scale to be determined by the Commissioner. Detailed information to be included on this site plan shall be requested by the Commissioner according to his evaluation requirements.

b. **Soil sample data** — if the parcel lies within or partly within an area containing poorly drained, very poorly drained, alluvial and/or flood plain soils, the data shall show precisely where each specific soil type is found. Soil types identified must be consistent with the categories established by the National Cooperative Soil Survey of the U.S. Soil Conservation Service.

c. **Biological information** — The applicant may be required to submit 1) an evaluation of the extent of the presence of plant species commonly associated with water courses, and 2) an analysis of the probable effect of his proposed activity upon the plant and animal ecosystem.

d. **Water course characteristics** — if the proposed activity may affect a water course lying within, partly within, or flowing through or adjacent to the affected property, the applicant may be required to submit information relative to the present character and the projected impact of the proposed activity upon the water course.

e. **Analysis of material to be deposited** — the applicant may be required to describe any materials to be deposited on the affected property in terms of volume, composition, and the possibility of erosion or leaching from deposited materials. The applicant may also be required to estimate the probable environmental impact of the deposition of materials on the affected wetlands or water courses.

f. A description of the proposed construction or the erection of structures on the affected property, including blueprints, engineering and architectural plans or designs. Such description should include the purposes of such construction or activity.

g. A list of other property owners whose rights or interests may be affected by the proposed activity.

Sec. 22a-39-5.5. Public hearing may be held

If the Commissioner finds, on the basis of the evidence before him, that a regulated activity is involved which may have significant impact or major effect on a wetland or water course, he may docket such proposal for public hearing.

Sec. 22a-39-5.6.e. Public hearings

All public hearings shall commence not sooner than thirty (30) days nor later than sixty (60) days after the receipt of a complete application. Notice of the hearing shall be published at least once not more than thirty (30) days and not fewer than ten (10) days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetlands or water courses are located. All applications, maps, and documents relating to this hearing shall be open for public inspection at the Office of the Clerk of the municipality wherein the affected inland wetland or water course is located, or at the Department. Notices of hearings shall be sent to the applicant, adjacent property owners, all known interested parties and groups, and to chief executive officers of the town wherein the wetland or water course lies.

Sec. 22a-39-5.7.a. Review by county soil and water conservation district

The Commissioner may submit one copy of the application to the County Soil and Water Conservation District for review. Such submission shall be made upon the receipt of a complete application, but failure to receive a written review from the Soil and Water Conservation District shall not delay a public hearing or prejudice the final decision.

information as the local inland wetlands agency or the Commissioner deems necessary to permit an informed decision.

b. To meet the burden of proof for wetlands exemption under subsection (a), the petitioner may be directed to present documentation by a soil scientist that the wetland in question, or a portion of it, does not have a soil type classified by the National Cooperative Soils Survey as poorly drained, very poorly drained, alluvial, or flood plain.

Sec. 22a-39-5. Application procedure

Sec. 22a-39-5.1.a. Where applications to be submitted

Any person wishing to carry out a regulated activity shall submit an application to the local inland wetlands agency. After June 30, 1974, if there is no such operating wetlands agency within the municipality, such person shall apply to the Commissioner.

Sec. 22a-39-5.1.b. Complete application

No application submitted to the Commissioner shall be deemed complete unless it shall be in such form and contain such information as the Commissioner deems necessary for a fair determination of the issues. The Commissioner shall inform all applicants of such necessary information.

Sec. 22a-39-5.1.c. Five copies of information required

Written information and maps required by the Commissioner shall be furnished in no fewer than five (5) copies.

Sec. 22a-39-5.2. Information required on applications

All applications to the Commissioner shall include the following information in writing on a form provided by him.

- a. The applicant's name, home and business addresses, and telephone numbers;
- b. The owner's name (if applicant is not the owner of the property), home and business addresses, telephone numbers, and written consent to the proposed activity set forth in the application;
- c. Applicant's interest in the land;
- d. The geographical location of the property which is to be affected by the proposed activity, including a description of the land in sufficient detail to allow identification of the properties on the Inland Wetlands and Water Courses Map;
- e. Purpose and description of the proposed activity;
- f. A site plan;
- g. Names of adjacent property owners;
- h. Required additional information.

Sec. 22a-39-5.3. Summary ruling

If the Commissioner finds that a proposed activity is a regulated activity not involving significant impact or major effect on the inland wetland or water course as defined in Section 2 of these regulations, he may allow the activity with or without conditions or limitations. The Commissioner, after full review of the considerations set forth in Sections 6.1.d through 6.1.h and other pertinent factors, shall issue a permit with or without conditions or limitations.

Sec. 22a-39-5.4. Plenary rulings

If the Commissioner finds that the activity applied for does or may involve a significant impact or major effect on a wetland or water course, he may request additional information which may include but is not limited to

- a. **Site plan** - a map of the proposed use and the property which will be affected, drawn by a licensed surveyor, professional engineer, or professional architect, registered in the State of Connecticut or in an adjoining

state, or by such other person acceptable to the Commissioner. The map shall be at a scale to be determined by the Commissioner. Detailed information to be included on this site plan shall be requested by the Commissioner according to his evaluation requirements.

b. **Soil sample data** - if the parcel lies within or partly within an area containing poorly drained, very poorly drained, alluvial, and/or flood plain soils, the data shall show precisely where each specific soil type is found. Soil types identified must be consistent with the categories established by the National Cooperative Soil Survey of the U.S. Soil Conservation Service.

c. **Biological information** - The applicant may be required to submit 1) an evaluation of the extent of the presence of plant species commonly associated with water courses, and 2) an analysis of the probable effect of his proposed activity upon the plant and animal ecosystem.

d. **Water course characteristics** - if the proposed activity may affect a water course lying within, partly within, or flowing through or adjacent to the affected property, the applicant may be required to submit information relative to the present character and the projected impact of the proposed activity upon the water course.

e. **Analysis of material to be deposited** - the applicant may be required to describe any materials to be deposited on the affected property in terms of volume, composition, and the possibility of erosion or leaching from deposited materials. The applicant may also be required to estimate the probable environmental impact of the deposition of materials on the affected wetlands or water courses.

f. A description of the proposed construction or the erection of structures on the affected property, including blueprints, engineering and architectural plans or designs. Such description should include the purposes of such construction or activity.

g. A list of other property owners whose rights or interests may be affected by the proposed activity.

Sec. 22a-39-5.5. Public hearing may be held

If the Commissioner finds, on the basis of the evidence before him, that a regulated activity is involved which may have significant impact or major effect on a wetland or water course, he may docket such proposal for public hearing.

Sec. 22a-39-5.6.e. Public hearings

All public hearings shall commence not sooner than thirty (30) days nor later than sixty (60) days after the receipt of a complete application. Notice of the hearing shall be published at least once not more than thirty (30) days and not fewer than ten (10) days before the date set for the hearing in a newspaper having a general circulation in each town where the affected wetlands or water courses are located. All applications, maps, and documents relating to this hearing shall be open for public inspection at the Office of the Clerk of the municipality wherein the affected inland wetland or water course is located, or at the Department. Notices of hearings shall be sent to the applicant, adjacent property owners, all known interested parties and groups, and to chief executive officers of the town wherein the wetland or water course lies.

Sec. 22a-39-5.7.a. Review by county soil and water conservation district

The Commissioner may submit one copy of the application to the County Soil and Water Conservation District for review. Such submission shall be made upon the receipt of a complete application, but failure to receive a written review from the Soil and Water Conservation District shall not delay a public hearing or prejudice the final decision.

fifteen (15) days after publication of such regulation, order, decision, or action. All appeals shall follow the procedure outlined in Section 22a-43 of the General Statutes, as amended.

Sec. 22a-39-11. Conformity of local wetlands agency regulations

Sec. 22a-39-11.1. Submission of local regulations to commissioner

All regulations, including regulated area boundary maps, promulgated or amended by local wetlands agencies, pursuant to the Act, shall be submitted to the Commissioner not later than ten (10) days after their adoption.

Sec. 22a-39-11.2. Conformity of local regulations

The Commissioner shall examine such regulations, including maps and amendments, to determine their conformity with the Act and with these regulations in terms of a) procedural safeguards, b) completeness of wetland and water course coverage, c) adequacy of enforcement machinery and information gathering procedures, and d) substantial adherence to the policies and goals of the Act.

Sec. 22a-39-11.3. Notice of nonconformance

In the event that the Commissioner shall find any part of such local inland wetlands agency regulation not in conformity, the Commissioner shall issue a notice of nonconformance which shall include:

- a. the reasons for holding any part to be nonconforming;
- b. the section or sections whose operation and effect shall be suspended until they shall be amended and resubmitted;
- c. the extent to which the Commissioner shall exercise jurisdiction over the municipal wetlands and water courses, for their protection, in the interval between the issuance of a notice of nonconformance and the resubmission of amended regulations, including boundary maps.

Sec. 22a-39-11.4.a. Amendment of nonconforming regulations

The local wetlands agency shall, pursuant to the provisions for adopting and amending regulations contained in the Act, initiate proceedings to amend such nonconforming regulations within twenty (20) days of the receipt of a notice of nonconformance.

Sec. 22a-39-11.4.b. Jurisdiction where local regulations disapproved

Upon disapproval of any municipal regulations, the Commissioner shall assume jurisdiction over those portions of such municipality's regulations as may be necessary to assure continuity of wetland and water course regulation in such municipality. This jurisdiction shall cease upon approval of the municipality's regulations by the Commissioner.

Sec. 22a-39-11.5.a. Where commissioner does not issue notice

Failure of the Commissioner to issue a notice of nonconformance within sixty (60) days of the receipt of such regulations, maps, or amendments shall be taken as approval of such regulations, except as provided in Section 11.5.b of these regulations.

Sec. 22a-39-11.5.b. Final written approval

If municipal regulations were not submitted to and granted approval by the Commissioner in a preliminary form prior to adoption, they shall not become effective until granted final written approval by the Commissioner.

Sec. 22a-39-11.6. Local regulations approved before effective date of these regulations

All municipal maps and regulations approved by the Commissioner before the effective date of these regulations shall be deemed sufficient to satisfy the requirements of the Act and these regulations. Such regulations shall be deemed fully operative as of their effective date.

Sec. 22a-39-11.7. Jurisdiction of municipality

After July 1, 1974, any municipality which designates a local wetlands agency and adopts regulations shall, upon approval of such regulations by the Commissioner, exercise jurisdiction over regulated activities.

Sec. 22a-39-11.8. Reports to commissioner

All enforcement activities undertaken by a municipality and all appeals involving a municipality which pertain to the wetlands and water courses of the State shall be reported, on a form supplied by the Commissioner, to the Commissioner within fifteen (15) days of the commencement of such action.

Sec. 22a-39-12. Bond and insurance

Sec. 22a-39-12.1. Bond may be required

The applicant, upon approval of the license, and at the discretion of the Commissioner, may be required to file a performance bond or other adequate security in an amount and with sureties and in a form approved by the Commissioner.

Sec. 22a-39-12.2. Condition for bond

The bond and sureties shall be conditioned on substantial compliance with all provisions of these regulations and conditions imposed on license approval.

Sec. 22a-39-12.3. Public insurance

The applicant may be directed to certify that he has public insurance against liability which might result from the proposed operation or use covering any and all damages which might occur within three (3) years of completion of such operations, in an amount to be determined by the Commissioner commensurate with the projected operation.

Sec. 22a-39-13. Conflict and severance

Sec. 22a-39-13.1. Conflict with other regulations

Where there is a conflict between the provisions of these regulations and those of any other regulation administered by the Department, the provisions of the regulation which imposes the most stringent standards for the use of the wetland or water course shall govern.

Sec. 22a-39-13.2. Invalidity of certain parts of regulations

The invalidity of any word, clause, sentence, section, part or provision of these regulations shall not affect the validity of any other part which can be given effect without such invalid part or parts.

Be it known that the foregoing rules and regulations are adopted and promulgated by the undersigned pursuant to Public Act No. 155 of the 1972 Public Acts after publication in the Connecticut Law Journal on July 31, 1973, of the notice of the proposal to adopt them, the holding of an advertised public hearing on September 10, 11, 12 and 13, 1973, on the issuance thereof and after consideration of all relevant matter presented, pertaining to Inland Wetlands and Water Courses.

In Witness Whereof, I have hereunto set my hand and seal this 18th day of December, 1973.

DOUGLAS M. COSTLE
Commissioner

Approved: Attorney General, February 11, 1974; Standing Legislative Regulations Review Committee, February 21, 1974. Received and filed: Secretary of the State, February 25, 1974. Effective February 25, 1974.

Sec. 22a-39-7.4. Initiation of activity to be within one year

Initiation of activity under a permit shall be within one year of the granting of the permit, unless the time period is extended by the Commissioner.

Sec. 22a-39-7.5. Assignment of permits

No permit may be assigned or transferred without the written consent of the Commissioner.

Sec. 22a-39-8. Other permits and licenses

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Nothing in these regulations shall obviate any requirement for the applicant to obtain any other permit or license required by law or regulation of the Government of the United States or of the State of Connecticut or any political subdivision is solely the responsibility of the applicant.

Sec. 22a-39-9. Enforcement

Sec. 22a-39-9.1. Entrance onto private property

In the performance of his duties under the Act, and under Section 22a-5 (d) of the General Statutes, the Commissioner or his designated agent pursuant to Section 22a-6 (d), may enter at all reasonable times upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of these regulations.

Sec. 22a-39-9.2. Issuance of orders

If the Commissioner finds that any person is maintaining any facility or condition which reasonably can be expected to impair, alter or destroy the wetlands and water courses of the State or which is creating or reasonably can be expected to create a source of pollution to the wetlands and water courses of the State, he may issue an order to such person maintaining such facility or condition to take the necessary steps to correct such facility or condition.

Sec. 22a-39-9.3. Appeal of order

Each order issued pursuant to Section 9.2 shall be sent by certified mail, return receipt requested, to the subject of such order and shall be deemed issued upon deposit in the mail. Any person aggrieved by any such order may, within thirty (30) days from the date such order is sent, request a hearing before the Commissioner. After such hearing the Commissioner shall consider the facts presented to him and shall revise and resubmit the order to the person or inform the person that the previous order has been affirmed. All such orders and hearings shall be issued and held in conformance with Sections 4-166 to 185 of the General Statutes, as amended, and with The Rules of Practice of the Dept. of Environmental Protection adopted pursuant to § 2 (a) of the P.A. 854 of 1971, as amended. The request for a hearing as provided for in this section shall be a condition precedent to the taking of an appeal under the provisions of Section 10 of these regulations. The Commissioner may, after the hearing provided for in this section, or at any time after the issuance of his order, modify such order by agreement or extend the time schedule therefor if he deems such modification or extension to be advisable or necessary. Any modification or extension shall be deemed to be a revision of an existing order and shall not constitute a new order.

Sec. 22a-39-9.4. Penalties for violation of regulations

Any person who commits, takes part in, or assists in any violation of any provision of these regulations shall be subject to the penalties provided in Section 22a-44 of the General Statutes, and to such other penalties as the

law may provide. If the Commissioner determines that any person is engaging in any regulated activity without a proper permit, or is exceeding the conditions or limitations placed on his permit or the scope of work as set forth in the application, or has obtained a permit through deception or through inaccurate information as to either the activity or its environmental impact, or has engaged or is engaging in any other violation of these regulations or the Act, the Commissioner may:

a. Issue a cease and desist order to such person, pursuant to Section 22a-7 of the General Statutes, as amended, directing him to halt any and all regulated activities or other violations;

b. Revoke or suspend any permit whose conditions or limitations have been exceeded, or which was secured through deception or through inaccurate information as to either the scope of its activity or its environmental impact;

c. Bring an action pursuant to Section 22a-44 of the General Statutes, as amended; or

d. Bring an action pursuant to Public Act No. 73-665 or any regulations promulgated thereunder.

Sec. 22a-39-9.5. Suspension or revocation of permits

In the event that the Commissioner shall suspend or revoke a permit pursuant to Section 9.4.b above, the applicant shall be notified of the Commissioner's decision by certified mail within five (5) days of the date of the decision and the Commissioner shall cause notice of his order in revocation or suspension of a permit to be published in a newspaper having general circulation in the municipality wherein the wetland or water course lies. Before such suspension or revocation may take effect, the Commissioner shall afford the applicant opportunity to show compliance with all lawful requirements for retention of the permit. However, if the Commissioner finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in his order, he may order summary suspension of a license pending proceedings for revocation or other action.

Sec. 22a-39-9.6. Monies to be maintained in separate account

All monies collected pursuant to this section shall be maintained in a separate account and shall be used by the Commissioner to restore the affected wetlands or water courses to their condition prior to violation, wherever possible.

Sec. 22a-39-9.7. Introduction of evidence

All parties may, subject to the ruling of the Commissioner, request summonses and examinations of witnesses; cross-examine witnesses; introduce records, papers, documents, or other evidence into the record; and submit oral arguments and file briefs for the purpose of showing compliance with requirements for retention of a permit and for the purpose of showing the absence of any violation.

Sec. 22a-39-9.8. Other remedies not excluded

Nothing in these regulations shall be taken as limiting or excluding such other remedies as are available to the Commissioner for the protection of wetlands and water courses.

Sec. 22a-39-10. Appeals

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Any person aggrieved by any regulation, order, decision or action made by the Commissioner pursuant to these regulations and/or the General Statutes of Connecticut may appeal to the court of common pleas in and for the county where the land affected is located within

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J. BURTON ANGELLE
DIRECTOR

WILDLIFE AND FISHERIES COMMISSION
400 ROYAL STREET
NEW ORLEANS 70130

EDWIN EDWARDS
GOVERNOR

January 30, 1975

Office of Flood Insurance
Federal Insurance Administration
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

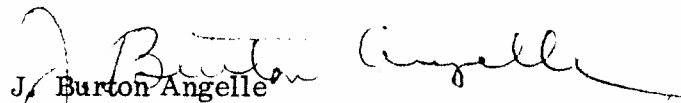
Dear Sir:

Personnel of the Louisiana Wildlife and Fisheries Commission have reviewed the Draft EIS for Flood Plain Management Regulations of the National Insurance Program. While the Draft EIS does not provide a detailed discussion of environmental impacts, we feel that the major issues are brought to the attention of the reader. To the extent that the proposed regulations deter the encroachment of urban and industrial development into floodplains and wetlands and abate the need for additional structural flood protection measures, they will have a beneficial impact on the protection of natural ecosystems. Much unwise development in floodplains and wetlands will be discouraged simply by the identification of the flood risks involved. The value of such lands to fish and wildlife is well documented.

As they effect fish and wildlife resources, the proposed regulations represent an improvement over existing regulations. Also, the 1973 Flood Disaster Protection Act is more favorable to fish and wildlife conservation than the legislative alternatives presented in the Draft EIS.

Thank you for the opportunity to comment on this Draft EIS.

Sincerely yours,


J. Burton Angelle
Director

JBA/tam

FILED
JAN 30 1975

IF 11 4087



HERBERT M. SACHS
DIRECTOR

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
WATER RESOURCES ADMINISTRATION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

January 21, 1975

Mr. Richard H. Brown
Environmental Clearinghouse - Room 8208
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Mr. Brown:

After reviewing the Draft Environmental Impact Statement HUD-FIA-EIS-74-IF, we feel that the several areas of particular concern to us were not developed.

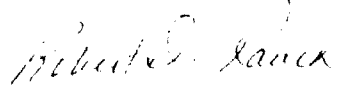
As you must be aware, the river system in Maryland is relatively small. We can, in fact, experience the development of entire watersheds. We can foresee several adverse effects by modifying the defined floodway by encroachment and allowing the defined one-foot increase in depth of the flood waters. This one-foot increase will have significant effects on the comparatively shallow channels in the Maryland river system. This effect can be described in several ways. The first, with respect to the increase depth as described in the tractive force equation which results in increase bed shear; $\tau_o = \delta RS$, where τ_o = total shear, R = hydraulic radius, S = slope and δ = specific weight of the fluid. Secondly, the increased depth will also result in an increased velocity and, thus, an increase in stream power. Both of these increases will result in the accelerated erosion of the existing channel. Another effect to be considered by the allowed encroachment is the impact from the resulting loss of storage. This loss of storage can be significant in Maryland due to the size of our watersheds as discussed previously. It will result in increasing storm peaks downstream and an increased flood hazard.

In my work around the State, I have found a concern shared by several counties in Maryland and I feel it should be discussed in the section entitled "Impacts on the Social Environment."

Mr. Richard H. Brown
Page Two
January 21, 1975

The problem is found primarily in the mountainous counties of Garrett, Allegany and parts of Washington where mining and heavy industry is the backbone of their economy. These areas appear to be losing their population rapidly and fear the demise of many of the towns. They feel any increased building restrictions will only increase their problem and many are totally against the program. Regardless of the justifications of these people, I feel the problem should be recognized and discussed for the people of these counties understanding.

Thank you.



Robert D. Rauch
Maryland Coordinator
Federal Flood Insurance

RDR:klm



TUP SOURCES COMMISSION

CARL JOHNSON
E. M. LAITALA
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HILARY F. SNELL
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CHARLES G. YOUNGLOVE

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING, LANSING, MICHIGAN 48926

~~RECEIVED BY THE DEPARTMENT OF NATURAL RESOURCES~~

Howard A. Tanner, Director

January 23, 1975

RECEIVED
JAN 23 1975

Richard Krimm
Assistant Administrator
Federal Insurance Administration
HUD
Washington, D.C. 20410

Re: Draft Environmental Impact Statement -
National Flood Insurance Program.

Dear Mr. Krimm:

We have read your Draft Environmental Impact Statement with great interest. The introduction was well prepared and easily understood. Wide distribution of this portion of the document is encouraged as it is the best explanation of the program that I have seen. I feel that the following sections should be reviewed with our comments to improve upon clarity and completeness of your document:

I. Description of Proposed Action

Page 4: The "general flooding and inundation" requirement for erosion losses does not apply to all Michigan Lakeshore communities. We commented on this in greater detail in our review of the proposed rule-making.

Page 5: It doesn't seem necessary to require an environmental assessment for exceptions concerning basements and storm cellars.

II. Analysis of Environmental Consequences

Page 9: Item #7 - The statement that "virtually all wetlands are defined as flood hazard areas" is an over generalization. This Act is not a wetlands preservation act. If fill is allowed, how are wetlands preserved?

Item #9 - Regulation of development in the flood plain will reduce contamination of flood waters by chemical and other wastes. It does not necessarily reduce pollution potential since wastes from upland development can enter a watercourse.



Page Two
Richard Krimm
January 23, 1975

Item #1 - With the exception of flood elevation, allowing encroachment to the floodway limits does not maintain the effects of flooding closer to the natural level. Also, siltation - sedimentation is not necessarily a negative effect of flooding.

The regulations do not decrease the area affected by flooding. They only assure that no greater area will be affected due to a flood stage increase. Therefore, item #3 is not true as it is written.

Impacts on the Man-Made Environment

Page 13: Item #2 - Prohibiting Floodway encroachment may give existing buildings protection. However, the requirements allowing elevated flood plain development do not result in increased protection. Allowing fill in flood fringe areas decreases flood water storage volume which may increase downstream flood peaks.

Impacts on the Social Environment

Page 15: "Economic Effects", item #2 - Is this a valid statement? It is true the program protects economic investment through its insurance aspect and its building requirement aspect. However, the statement implies a community will cease to exist after a flood if there is no flood plain management. An additional economic effect is the cost to a community in time and personnel to enforce the flood plain zoning ordinance and maintain records for an annual report to FIA. Also, may require public purchase of floodway properties in some instances or be considered taking of land without compensation.

IV. Relationship between Local Short-Term Uses, etc.


Page 19: Item A-3-a, This statement is valid only if it reads "Less development in flood hazard areas, therefore, less increase in the height of the flood crest".

Page 20: Item B-3, The floodway requirement assures no increase in height and area of flooding upstream. Decreasing flood water storage volume by encroachment on the flood plain may increase downstream flood peaks, but the program does not prohibit flood plain development.

If you have questions concerning these comments please contact me.

Sincerely,

BUREAU OF WATER MANAGEMENT
Hydrological Survey Division


James S. Boulton, P.E. Chief
Flood Plain Management Unit

RW/JSB/bw
cc: Sandra Schroeder, Region V-HUD



DEPARTMENT OF

NATURAL RESOURCES

James A. Rhodes Governor Robert W. Teater Director

Division of Planning

FOUNTAIN SQUARE • COLUMBUS, OHIO 43224 (614) 466-7803

January 24, 1975

Mr. Richard H. Broun
 Environmental Clearance Officer - Room 8208
 U.S. Department of Housing and Urban Development
 Washington, D.C. 20410

Dear Mr. Broun:

As requested by Mr. David O. Meeker, Jr. of your agency, the Department of Natural Resources has conducted an interdisciplinary review of the Draft Environmental Impact Statement (EIS) entitled "Flood Plain Management Regulations of the National Flood Insurance Program." The following general and specific comments on the document are offered for your consideration.

General Comments

It is this Department's opinion that the National Flood Insurance Program, through its flood plain regulations; will contribute significantly to the Nation's expressed policy of enhancing and protecting the quality of the human environment as well as ultimately reducing damages attributable to flooding. While we recognize that it is a difficult task to prepare an EIS on proposed rulemaking, this is hardly an excuse for circulating a statement that is sloppily and hastily written. In addition to many meaningless and unsubstantiated sentences, there are an excessive number of misspellings, omissions of words, and dropped lines. It is a shame that such a commendable and progressive program is portrayed by a shoddily written Draft EIS.

We are particularly concerned about the apparent limited distribution of the Draft EIS to state agencies throughout the nation. Since the program in question contains far reaching ramifications on land use and development patterns in every state, a more conscientious effort to solicit comments from each state would appear appropriate.

The implicit idea throughout the statement is that the flood insurance program through the proposed regulations will cost less or at least shift much of the burden of payment for flood loss and damage to the people and enterprises which are affected most by flooding due to their location, rather than all the nation's taxpayers. While we recognize that considerable study has been undertaken in this area and that this information is available from reports of Congressional hearings and other sources, the Draft EIS does not stand by itself in this respect. This important underlying concept of the program is not adequately emphasized, documented or referenced.

It is our belief that the author of the Draft EIS assumed that those who would be reviewing the document would already have considerable knowledge of the program. While this assumption may be valid under the pretense that all reviewers would understand the program, the assumption is not valid if one considers that under the CEQ "Guidelines", an EIS is a document available to the public and subject to their review. Therefore, the statement should have been written in a manner that is understandable to those with expertise in the program as well as the layman.

Specific Comments

In the SUMMARY, the Summary of Environmental Impact does not summarize the environmental impact. The phrases "beneficial environmental impacts" and "adverse environmental impacts" are referred to, but these impacts are not briefly listed.

The second and third paragraphs of I. DESCRIPTION OF PROPOSED ACTION appear to be presented as program justification rather than description of the proposed program.

Under Flood, 1. and 2. of I. (second paragraph on page 2), the terms "Residences" and "Non-residents" are used. This terminology is confusing. Perhaps the terms "Residential" and "Non-residential" would be more appropriate.

Statement II.A.1. concerning "the prevention of adverse environmental impacts associated with construction" is only partially applicable to regulated areas. Many adverse environmental impacts associated with conforming use construction can occur on regulated floodplains. The potential net effect of the regulations is to guide development which might have occurred in the floodplain onto other areas. Therefore, environmental impacts associated with construction are not actually prevented but are displaced. The statement should document this situation.

Statement II.A.2. is not necessarily supported by the literature on flood hazards. Studies by various researchers, as Gilbert White, Robert Kates, Ian Burton, and Wolf Roder, indicate that although existing flood-hazard-zone residents may suffer considerable losses, they tend to return to their original areas. Socio-economic factors also contribute to the reestablishment of low-income residents back on the floodplain.

Agriculture may be an "environmentally clean" pursuit (II.A.3.), but is not always or necessarily so. This statement should be qualified. Agriculture certainly is less damaging to the morphology of the floodplain than other uses---especially those that involve construction. The possibility that use of a floodplain for agriculture may lead to requests or demands that the stream be channelized should be addressed.

While the complete prohibition of "building in flood hazard zones" (II.A.4.) by many communities may tend "to prevent disruption of the natural environment and the community itself," reduction of disruption will depend strongly on the alternative uses to which the flood-hazard zones are put. It may be that one kind of gross and therefore obvious disruption will be replaced by another, more subtle yet more invidious disruption of the environment (e.g., the replacement of buildings, etc., by fertilizer and biocide pollution). The statement is too general as it stands. It should be qualified.

The effects of lessening or encouraging considerable areas of impermeable surfaces in the floodplain are addressed only briefly in Section IV. and not to any great extent in Section II, ANALYSIS OF ENVIRONMENTAL CONSEQUENCES. Although the effect might be slight, there is a potential beneficial impact on groundwater recharge which might be translated into economic terms. However, extensive areas such as parking lots which would be acceptable from a floodplain management standpoint, might not be beneficial from a groundwater recharge standpoint.

The statement (II.A.6.) that "floodplain management measures....[will obviate]...dams, dikes, seawalls, reservoirs, channel improvements, levees, and [other protective works] which have large environmental impacts" may not apply in all situations.

The EIS should address those circumstances under which "protective works" would still be necessary.

It is questionable that "virtually all wetlands are...flood hazard areas" (II.A.7.). The word "virtually" should be replaced by the word "nearly". While the substance of this sentence does seem true, the sentence is too emphatic in its present form.

There is no guarantee (II.A.8.) that "overall decrease in development will have a preservative effect... on common plants and wildlife...[and]... on unique and unusual natural features in the flood hazard area." Certain conforming uses (agriculture, golf courses, cemeteries, parks) would eliminate "common plants and wildlife" in many --- perhaps most --- cases, and bulldozing, blasting, forestry activities, and fires could eliminate the "unique and unusual natural features." By themselves, the proposed regulations would not be sufficient in all cases to assure the preservation of important natural attributes of floodplains

Statement II.A.9. may not necessarily be so. Although potential polluters may be forced to locate farther from the stream, they may still be able to lay pipes or culverts to carry wastewater to the stream. This situation might be more costly to the potential polluter and to our knowledge is not controlled by the flood insurance program.

Statement II.A.10. should be evaluated in light of comments previously offered on other portions of this section of the E.I.S. There simply is no

guarantee that the proposed regulations will ensure that "the natural plant and animal life of the floodplain will... flourish and develop in less disturbed patterns, [and that] the productivity and diversity of the existing ecological relationships will be allowed to follow natural patterns, with less chance of disruption by human intrusion and development." Such a statement gives the impression that the proposed regulations will induce more positive environmental impacts than actually will occur.

Are zones of subsidence located more often in flood-hazard areas than outside them (II.A.11.)? If not, then this statement is unnecessary.

The discussion at the bottom of page 9 and at the top of page 10 should be improved. The claim that siltation and sedimentation interfere with "oxygen cycles" should be amplified or reformulated. What does it mean? (An example would clarify the point.) The claim that the "dynamic force of floodwater... displaces and relocates biological and botanical life" is difficult to interpret. It goes without saying that floodwaters displace (i.e., relocate) organisms. Is the word "relocates" intended to imply that plants and animals become established elsewhere? Many organisms that are adapted to rivers and floodplains will not survive in their new locations. Perhaps this interpretation does not conform to the writers' intentions, but it is justified and reasonable. The statements are vague and confusing in their present state. Perhaps the word "relocates" was not essential to the meaning of the sentence.

Statement II.A. (third) 3. (page 10) does not adequately describe why the impact would be greater when fill is used to elevate structures. This statement should be substantiated.

Statement II.A. (second) 10. (page 12) suggests that "exceptional circumstances" might exempt a community from some of the program's regulations. The EIS should indicate what some of the "exceptional circumstances" might be.

Under IMPACTS ON THE MAN-MADE ENVIRONMENT (page 13), the first statement is so general that it understates the potential future land-use effects. Many activities that would have been located in the floodplain will have to be located elsewhere. Integration with land-use plans should be discussed.

The significance of the third statement concerning physically limited persons under IMPACTS ON THE MAN-MADE ENVIRONMENT (page 13) is not completely obvious. This statement should be clarified.

Under IMPACTS ON THE SOCIAL ENVIRONMENT - Character and Cohesiveness (page 14), there is no discussion of the communities' possible reorientation and focus on the use of the floodplain area. New emphasis might be on recreation or other uses, thus, possibly changing the character of some communities.

The discussion of Aesthetics (page 15) is too general. Some acknowledgment of the fact that aesthetics is, in part, dependent on the values of the people of a particular area and of the various functions of a floodplain area as they might relate to aesthetics seems appropriate.

Under Economic Effects (page 15), there is no consideration of materials (resources) that might have to be utilized in floodproofing. The EIS does address the costs briefly. This subsection might be an appropriate place to use examples of costs, amount of resources necessary, etc. The reference to "true value" in statement 1. of this subsection might be considered somewhat of a misconception. The brief statement might be more correct if it used the phrase "a truer value." However, the Final EIS should proceed to state what this "truer value" is and how it relates to the flood insurance program.

The Draft EIS is totally deficient in discussing the potential economic impacts which the proposed regulations will have on industrial towns and villages that are located in floodplains and are fully developed. The regulations may substantially affect the economic base and stability of communities falling into this category. A discussion citing this issue must be provided in the final E.I.S. to disclose the full ramifications of the flood insurance program. (See previous comments concerning "protective works" and "exceptional circumstances").

Statement 2. of "PROBABLE ADVERSE EFFECTS..." (page 16) should be expanded to state under what circumstances the flood insurance program would cause a community to construct protective works (i.e., there are elements of the program that might cause this development). The resources that would be committed to these works should be discussed.

The following comments pertain to the enclosures other than the EIS which were submitted to this agency for review.

In the enclosure entitled Amendments to Subchapter Necessitated By Legislation, referring to Subchapter B- N.F.I.P., an attempt is made to include erosion under 1909.1 Definitions. This definition is contradicted or negated, however, under Part 1911 - Insurance Coverage and Rates, of the same proposed amendments. Under Section 1911.1 (b) Special Definitions, damage as a result of erosion or undermining would be covered only if it resulted in the overflow of inland or tidal waters. This overflow of inland or tidal waters would have already been covered under the general definition of "Flood" without "Erosion" being added.

Was the wording in Part 1911.1 (b) an attempt not to cover damage caused by the erosion or undermining of land caused by waves or currents of water exceeding anticipated cyclical levels? If not, what was the purpose of adding the last line in Section 1911.1 (b) which reads "which result in flooding as defined in (a) (1) above."?

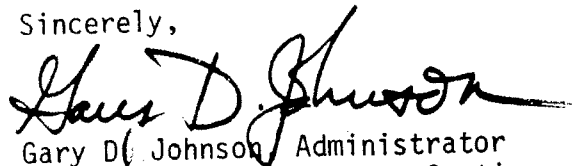
Mr. Richard H. Broun
January 24, 1975
Page 6

In the enclosure entitled Proposed Rulemaking, Part 1911 - Insurance Coverage and Rates, Section 1911.1 is left open and reserved. This raises the question as to what will eventually be included here. The definitions under this section should be consistent or remain the same as those found in the beginning of the Proposed Rulemaking publication. Also, the term "special flood-related erosion hazard" which is utilized several times on page 39 of this same enclosure needs to be consistently defined and the extent of coverage under the program made clear.

We appreciate this opportunity to review and comment on the subject Draft Environmental Impact Statement and accompanying material. We are confident that consideration of our comments will be evident in the forthcoming Final Environmental Impact Statement.

Should you have any questions or comments, please do not hesitate to contact this office immediately.

Sincerely,


Gary D. Johnson, Administrator
Environmental Assessment Section

GDJ:dlw

cc: Gene Wright, Ohio Environmental Protection Agency

Encls.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AFFAIRS
HARRISBURG
17120

January 27, 1975

Mr. Richard H. Broun
Environmental Clearance Officer - Room 8208
Department of Housing and Urban Development
Washington, D. C. 20410

Dear Mr. Broun:

This is in response to your recent request for our comments on the Draft Environmental Impact Statement on the Flood Plain Management Regulations of the National Flood Insurance Program (November, 1974).

Our major comments on the above report are as follows:

1. While the report is of an informative nature, it is difficult to assess the environmental impacts of either the existing regulations or the proposed changes to the regulations by combining the two together. Related to this is the question of why are the regulations being revised? The opening statement on page one (1) does not go far enough as there are proposed changes to the regulations which do not appear to be directly connected with the requirements of the 1973 Disaster Protection Act. These include such things as variances, non-enforcement suspensions, revisions to Section 1910.3(b), clarification of floodproofing definition, etc.
2. The impact of the development goals and planning considerations of Subpart B, Sections 1910.22 - 1910.25 are not clearly reflected in the Statement. This may stem from the fact that the actual flood plain managements regulations of Section 1910.3 are not very closely tied into the goals and considerations of Subpart B. In fact, this should be the first thing a community should consider in attempting to comply with the regulations. Certainly,

Mr. Richard H. Broun

January 27, 1975

serious consideration should be given to restructuring these two (2) parts if a favorable relationship between man's environment and the maintenance and enhancement of long term productivity is to be established as indicated on pages nineteen (19) and twenty (20). Otherwise, communities will probably tend to only adopt the minimum regulations since, "in practice, minimum regulations almost always become the rule". This may not be desirable because these standards may not be suited to their particular situation. It has and will probably continue to undermine the efforts of those communities that have established more stringent flood plain management programs before their participation in the flood insurance program began.

3. The Statement does not distinguish between the impacts of the regulations on urban communities, suburban communities or rural communities. This is probably because the regulations do not. But, it would seem logical to assume that a greater impact would result in the rural and suburban areas. This is where the greatest opportunity lies to reduce flood damages.
4. As mentioned on page one (1), a subsidized flood insurance program with flood plain management controls theoretically avoids the possibility of being just another disaster relief program and reduces the tax burden. However, this is questionable in the early phases of the program because the information provided is sketchy and the regulations are minimal. It would seem development is being subsidized rather than discouraged as indicated in A.1, A.2, A.5 on page eight (8) since flood insurance is available to all.
5. Encouraging communities to consider other available flood plain data such as Corps flood plain information reports is good (page two (2)). However, no consideration is given in the Statement to what impacts this will have and what impacts resulted from it not being included in the existing regulations. Nor is any consideration given to the quality of the final flood insurance study

Mr. Richard H. Broun

January 27, 1975

and how it affects the environment. Lack of detailed uniform data in these studies could force people to locate in flood prone areas not studied and/or where the regulations are less stringent. The effect will be the same as mentioned in Item four (4), subsidizing development in flood prone areas.

6. The impacts of "totally dry and/or essentially dry" floodproofed structures are not discussed. It could be that this type of floodproofing could have harmful environmental effects in certain instances.
7. No consideration is given in the Statement to the effects the regulations have and will have on historic districts in the man-made and social environments (pages thirteen (13) through fifteen (15)). This is something that should be addressed both in the regulations and the Statement since both state and national legislation has been enacted which gives special consideration to such districts.
8. In relation to the impacts on the Social Environment - community services, page thirteen (13), nothing is discussed about communities being encouraged to install flood warning devices and to establish emergency evacuation procedures and programs. Further, under psychological well-being, page fourteen (14), there is no point made about the psychological effect many people undergo when they are flooded and that the negative effect is or will be reduced or avoided through implementation of the regulations. Also, in connection with the impact on economics, page fifteen (15), there seems to be a conflict with a statement made under character and cohesiveness on page fourteen (14). According to the former, property values may be deflated because of the regulations whereas with the latter the property values are increased. It would be well for more study to be done in this area. And finally, in connection with public safety the threat to the public safety should be elaborated on further. For instance, examples of floods where lives were lost and perhaps specifically how they were lost should be cited.

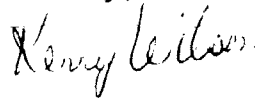
Mr. Richard H. Broun

January 27, 1975

9. Reference is made on pages sixteen (16) and eighteen (18) to protective devices and their impacts. Even though F.I.A. does not encourage these things, no mention is made of how they might be in conflict with the regulations. Take for example, the construction of a levee or flood wall in the floodway portion of a community's flood plain.
10. Despite the fact that the "domino theory" is discussed on page twenty (20), item three (3), the statement does not really address the issue of establishing a flood plain management program on a watershed or area basis. It remains to be seen whether or not the program's "piecemeal approach" will prevent the "domino theory".
11. Item one (1) on page twenty-three (23) should be expanded to read "Brief History of Flood Plain Management at the Federal Level".
12. Appendix B, Item two (2). Legislative Alternatives to the Existing National Flood Insurance Program, pages B-5 through B-7, should be expanded to include the consideration of other programs to reduce flood damages such as the acquisition of flood plain areas by fee simple, easements or developments rights, covenants, etc.

Should you need clarification on any of the above comments, please do not hesitate to contact this office. Thank you for requesting our comments.

Sincerely,



Kerry Wilson
Planning Analyst
Bureau of Planning

KW/lp

cc: Secretary William H. Wilcox
Roy Newsome
John Carling
Dallas A. Dollase



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
STATEWIDE PLANNING PROGRAM
265 Melrose Street
Providence, Rhode Island 02907

January 24, 1975

Mr. Richard H. Brown
Environmental Clearance Office - Room 8208
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Mr. Brown:

This is to inform you that this agency has reviewed the Draft Environmental Statement on Flood Plain Management Regulations (November, 1974) in accordance with OMB Circular A-95.

After having reviewed the proposal and having been in contact with other state agencies on this matter, we would like to relay the following comments.

This agency is represented in the NERBC Task Force on Flood Plain Management. At the task force meeting of January 20, 1975, the subject EIS was discussed in some detail. After this discussion, a motion was made, seconded, and passed that the task force respond to the EIS through the NERBC. A copy of the possible comments are attached.

Any additional comments received by this agency will be forwarded to you promptly.

Yours very truly,

Laniel W. Varin
Laniel W. Varin
Chief, Statewide Planning

DWV/JOB/gt
Enclosure
cc: Mr. Robert Mendoza



NEW ENGLAND RIVER BASINS COMMISSION

55 COURT STREET • BOSTON, MASSACHUSETTS 02108
PHONE (617) 221-6244

MEMORANDUM

TO: Distribution List

FROM: Tom Klock

SUBJECT: NERBC Workshop Discussion Item - HUD Draft EIS
on National Flood Insurance Program.

Subsequent to the initial mailing for the flood plain management workshop scheduled on January 21st, some comments have been received on the EIS. These are being passed along to aid you in your review, and are compiled as points to consider for discussion at the workshop. They have been received from a number of sources (NERBC program participants as well as interested parties) including Dr. Ruth Mack, consultant to the Connecticut River Basin Program, Rutherford Platt of U Mass and a member of CRBP Science Advisory Group, Tom Melone and Ed Thomas of HUD, and members of NERBC staff.

The following provides a summary of these points.

1. Creating Awareness

The EIS should emphasize the fact that the program has greatly increased the degree of local awareness of flood hazard areas. This is a major accomplishment which will have strong positive environmental effects. Program acceleration would strengthen the general knowledge of risks involved in flood plain development.

2. Program Acceleration Through Emergency Provisions

The EIS does not authentically reflect the environmental difficulties local communities are experiencing because of the manner chosen for accelerating the program. The 1969 amendments to the Act provide the HUD Administrator with emergency implementation provisions. However, many contend that the regulations subsequently promulgated do not follow the intent of Congress in passing this amendment. The main concern is that new construction is allowed to be eligible for subsidized insurance without counterpart locational restrictions which the regular program requires. Most see this not only as self-defeating,

but actually promoting unwise flood plain development. If this is the case, then a number of points made in the EIS on environmental and social impacts are actually fallacious, such as found on page 8, items II (A), (3) and (5). HUD considers the emergency provisions as being temporary until Flood Insurance Rate Maps are prepared. However, the interim period until these are provided could be quite extensive because of the backlog of mapping work which HUD has. This creates a major loophole for development pressures on a community.

3. Floodplain Storage Capabilities

There are two oversights on this subject - (1) the impacts from allowing construction and fill under the emergency program, and (2) the premise that some fill outside the flood way will not cause major adverse effects. Both of these concerns relate to the issue floodplain management is broader than a community by community approach - extensive development within one part of the floodplain could negate natural valley storage capability and adversely alter the flood flows in downstream communities.

4. Cost of Insurance

Over the long term, the cost of insurance may not appear to be a reasonable investment in terms of the risk involved. The EIS does not reflect the fact that insurance is a better buy because of subsidies in the higher risk zones, thereby raising the question whether development of higher risk zones might not be preferred on the basis of immediate investment costs over a short time frame. Subsidies on insurance may be attractive enough to outweigh costs of meeting new construction standards.

5. Variances

There are two concerns expressed on the rule-making change to allow for variances. First, the assumed purpose of the Act is to prevent continued development or expansion in high risk areas. To assume that the owner of an undeveloped parcel has the same right to use his land as his neighbor with an existing structure, irregardless of added hazards created, and then to provide insurance to cover the risk associated with exercising this right, could promote extensive additional development which would result in severe environmental impacts. Second, there is concern that the variance principle might be used as a means of allowing extensive reinvestment after an area has received flood damages.

6. Omissions

There are a number of other issues which should have been addressed in the EIS. Among those mentioned are - (1) negative economic impact

on community over long term when new industry which had located in flood plain for expediency reasons is flooded out, (2) clear, concise policy on human habitation such as in high-rise apartments, (3) tax losses to community for limiting flood plain development, and (4) builder does not usually assume long term risk.

The above points have been compiled to give some guidance on what comments are being considered, and to stimulate thinking on what should be addressed at the workshop. If additional comments are relayed to this office, a subsequent tabulation will be made and sent prior to the workshop date. Overall, the goal being sought is to furnish HUD with a set of comments, positively phrased, which will result in a more authentic EIS. This may in turn lead to a strengthening of the program through appropriate legislative or administrative adjustments.

January 14, 1975

TEXAS WATER DEVELOPMENT BOARD

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January 28, 1975

HARRY P. BURLEI
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IN REPLY REFER TO

TWDBE-SS

Mr. Richard H. Broun
Environmental Clearance Officer-Room 8208
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Mr. Broun:

In a December 13, 1974 letter to Paul Gillett of our staff, Mr. David O. Meeker, Jr. requested a review of and comments on the Draft Environmental Impact Statement for the proposed Land Management and Use Regulations of the National Flood Insurance Program. Mr. Meeker requested that our comments be addressed to you.

The draft statement, prepared by the Federal Insurance Administration (FIA), fulfills a U.S. Department of Housing and Urban Development (HUD) requirement. It examines the National Flood Insurance Program in light of FIA proposed rules and regulations for Program administration. The proposed rules and regulations would bring existing rules into compliance with those new statutes which amend or alter the basic Program authority.

There are a few errors in the draft statement which appear to be typographical. No comments are made about them since it is assumed that the statement will receive adequate final editing and proofing.

The draft statement explores in depth all aspects of the Program. It concludes that the Program, the rules, and the regulations will be almost completely in harmony with environmental objectives.

Mr. Richard H. Broun
Page 2
January 28, 1975

Program impact is expected to be overwhelmingly favorable in this respect and should induce no adverse reaction from environmentally oriented opinion.

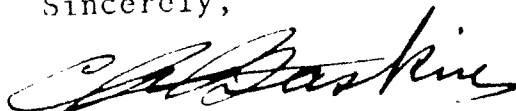
Some criticism can be expected from those segments of the public oriented towards structural solutions to the problem of flooding. Although structural solutions are not encouraged in the draft, neither are they exactly discouraged, (B2 on page 16, for instance). Levees and channelization are, in particular, noted in the draft as a potential transfer of the flooding problem from one area to another and a prime source of environmental deterioration.

Based on the proposed Program rules and regulations, the draft statement should have no profound impact on the Program. Adverse environmental effects would result, according to the draft statement, if the proposed rules and regulations were to be relaxed. Undue restriction on development and adverse social and economic effects might result by additional restrictive measures.

We recommend that the environmental statement be accepted essentially as drafted.

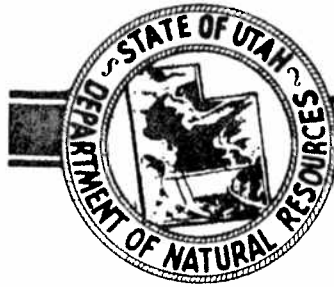
If we can seek to provide additional assistance relative to this statement, please let us know.

Sincerely,



C. R. Baskin
Principal Engineer
Data and Technical Review

cc: Chief, State Planning and Development
Office of the Governor, DPC



Gordon E. Harmston
Executive Director
Dept. of Natural Resources

Calvin L. Rampton
Governor

DIVISION OF WATER RESOURCES

435 State Capitol
SALT LAKE CITY, UTAH 84114
Tel. 328-5401

Daniel F. Lawrence
Director

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Mr. Richard H. Brown
Environmental Clearance Office, Room 8208
Department of Housing and Urban Development
Washington, D. C. 20410

Dear Mr. Brown:

Re: Draft Environmental
Impact Statement

On January 13, 1975 your memo transmitting the Draft of Environmental Impact Statement was received and a cursory review was made of its contents. I plan to have the State Environmental Committee further review its contents.

I personally feel that an exceptional job has been done on the Environmental Impact Statement on the National Flood Insurance Program Regulations and do not have any objections at this time.

After the Environmental Committee of the State of Utah reviews the Draft and they have any further comments, they will be sent to you.

I appreciate receiving additional information on the Flood Insurance Program.

I would like very much to obtain an additional supply of the HUD News Questions and Answers on the Federal Flood Insurance Program, dated February 1, 1974, for distribution to communities having questions about the National Flood Insurance Program. Should you have some current literature on the proposed Revision to the Flood Plain Management Regulations, I would like to receive a small supply.

Thank you for your keeping me informed of current changes to the program.

Sincerely,

Ray H. Zenger
State Flood Coordinator

RHZ/cq

January 16, 1975

Mr. Richard H. Brown
Environmental Clearance Office - Room 8208
Department of Housing and Urban Development
Washington, D. C. 20410



Subject: Draft EIS on Flood Plain Management
Regulations of the National Flood
Insurance Program.

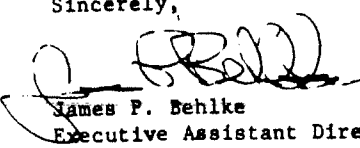
Dear Mr. Brown:

The State of Washington Department of Ecology has reviewed the subject document and offers the following comments:

1. (Page 1) Flood The first paragraph leads the reader to believe that the community will not receive the Flood Hazard Boundary Map (FHBM) until they have met the four numbered requirements. At the present time HUD is providing the FHBM's based on one requirement and they will continue to do so under this change. The community is identified as being flood-prone. (These are special flood hazard areas within the community.)
2. The section on alternatives seems unusually abbreviated. Alternative methods to meet requirements should be addressed in more detail. The implications of the use of 500 year or less than 100 year standards needs further explanation.

Thank you for the opportunity to review this document. Please address any questions or comments to Mr. T. L. Elwell of our Environmental Review Section or Mr. Ed Hammersmith, State Flood Insurance Coordinator.

Sincerely,


James P. Behlke
Executive Assistant Director
Office of Comprehensive Programs

JPB:je

CC: Ed Hammersmith

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Kulmanstein

WILLARD E. WALBRIDGE, Chairman of the Board

May 20, 1975

Mr. J. Robert Hunter
Acting Federal Insurance Administrator
Office of Flood Insurance
Department of Housing and Urban Development
Washington, D.C. 20410

Dear Mr. Hunter:

The Houston Chamber of Commerce wishes to submit for your consideration the attached comments pertinent to the Proposed Criteria of National Flood Insurance Program as they appeared in the Federal Register of March 26, 1975.

We appreciate this opportunity and hope our comments will be helpful.

Sincerely yours,

Willard E. Walbridge

Chairman of the Board

cc: Texas Congressional Delegation

611 2

for periodic revision of the rate maps to reflect these improvements. If the FIA feels it must outline in detail what it will accept, ignoring the ability of local communities to implement the Program to conform with local needs, then the FIA must include a variance allowance for structures planned in areas where stream and/or flood protection improvements are being constructed.

7. Environmental Review Policy

At page 5 of the Draft EIS, the discussion of the "community exception" should be stricken. It provides that:

Prior to the granting of any exceptions by the Federal Insurance Administrator, FIA would undertake an environmental assessment and receive approval of a Special Environmental Clearance Statement or Environmental Impact Statement, as appropriate, as set forth in HUD Circular 1390.1 "Departmental Policies, Responsibilities, and Procedures for Protection and Enhancement of Environmental Qualities."

It is unnecessary for the FIA to pass individually on every stream improvement or flood protection system. Local officials are best qualified to assess these matters. Throwing improvement into the maze of the federal environmental impact statement is completely unjustified and will cause unwarranted expense and delay which may make many projects important to a community's drainage system economically infeasible. Under the National Environmental Policy Act, a federal EIS is required only for such actions as those involving federal funds, issuance of federal regulations, or approval of issuance of a statutory permit. In most drainage and flood control projects, none of these criteria apply. This EIS requirement should not be accomplished by simple fiat of the FIA. If the federal government believes all local stream improvements which could qualify part of a community for exemption from purchasing flood insurance should be subject to a federal EIS, Congress and not the FIA should be the federal body making such a decision.

8. Flood Protection Systems

On January 21, 1975, the FIA proposed regulations relating to flood protection systems and pertinent to the March 26, 1975, proposed regulations. The regulations would provide a procedure by which communities which have made "adequate progress toward completion of a flood protection system" could obtain insurance at rates applicable as though the system were complete. Although the proposed regulations do not address the land use aspects, presumably the local permitting authority would administer the permitting and land use program as though the system were complete. Three issues raised by this proposal should be addressed:

1. The exception should apply to locally planned, authorized and funded projects. Local governments undertake many projects such as stream improvements or local levee systems. The benefits of such projects should not accrue only to those which are federally funded. Where local bonds have been issued, the funding is as certain as federal funding, and perhaps more certain.
2. The permitting agency should have clear authority to permit new building construction where the system meets the criteria on funding and percentage of completion, as though the system were in place.
3. FIA regulations should provide that when flood protective measures have been completed, the homeowner should have the option of deciding whether to purchase insurance. This can be achieved by the FIA redesignating the area and revising the pertinent map.

The Draft EIS reflects a basic prejudice against protective works, a bias which has no place in the Program. Many improvements are local in effect, funding and need, and the FIA displays a basic misunderstanding of the topography, drainage characteristics and growth of areas such as Houston and Harris County by assuming that building restrictions will alleviate the need for other improvements. Houston and Harris County have both studied and planned for community

growth and attendant flood control and drainage improvements. The FIA should curb its dislike for such protective measures and halt its progression toward prohibiting such measures where they are necessary and planned for at the local level. The FIA does not have a sufficient understanding, appreciation of or experience with local conditions and local needs, and Congress has not given and should not give it this authority.

The portions of the Draft EIS reflecting this FIA unwarranted bias should be removed from the final statement. They are:

Where the flood plain management measures are applied, there will be less future need for protective works (i.e., dams, dikes, seawalls, reservoirs, channel improvements, levees and others) which have large environmental impacts.

This conclusion makes two assumptions for which the FIA established no basis. First, the Draft EIS assumes that reservoirs, channel improvements, and levees are not flood plain management measures. The FIA instead should recognize that these works are themselves flood plain management measures. The City of Houston has two flood protection reservoirs vital to its safety and numerous channel improvements both in place and planned which are necessary to prevent flooding; these structures and improvements certainly are flood plain management measures. Such projects will continue to be needed to provide drainage and prevent or minimize flooding, irrespective of the institution of restrictions on construction. Finally, the Draft EIS assumes without examination of the issue that these works will have large environmental impacts.

The FIA also finds without explanation of its basis that:

When building in the flood hazard area is regulated, there is less reason to build protective works (i.e., reservoirs, channel improvements, levees and others) which are:
a) subject to failure, b) whose installation

causes temporary as well as permanent environmental impacts, and c) which irretrievably consume large amounts of funds in construction costs.

Where these impacts are local in nature, these assessments and assumptions should be left to local governments.

On page 17, the Draft EIS notes that lesser standards would decrease beneficial environmental impacts of the Program. This statement reflects the FIA attitude that the National Flood Insurance Program is an environmental and land use program and not principally a measure to provide flood insurance. The FIA should confine its standards to those necessary to implement the insurance program, and then assess the environmental impact as required by the National Environmental Policy Act. The FIA should not decide what environmental concerns it may have and then write the Program to best serve those ends. The Program is a flood insurance measure, not an environmental measure.

In summary, the FIA should clarify its regulations and define terms which clearly are vital to understanding a particular paragraph. The FIA should recognize that particular land use and flood control decisions will be handled best on a local level by local officials who are familiar with local conditions. The regulations should allow for map alterations and conforming building restrictions where flood control measure are under construction. Finally, the FIA should halt its slow march toward forbidding fill in the flood plain and improvements of channels.

ENVIRONMENTAL
DEFENSE
FUND



1525 18th STREET, NW, WASHINGTON, D.C. 20036/202 635-1485

January 16, 1975

Office of Flood Insurance
Federal Insurance Administration
U. S. Department of Housing
and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: HUD-FIA-EIS-74-IF/Draft Environmental Impact
Statement, Flood Plain Management Regulations,
November, 1974.

COMMENTS OF THE ENVIRONMENTAL DEFENSE FUND

The Environmental Defense Fund, Inc. (EDF) is a non-profit, public interest membership corporation, organized and existing under the laws of New York, with its principal office at 162 Old Town Road, East Setauket, New York 11733. Its approximately 50,000 contributing members are located throughout the nation and are represented by a staff of lawyers, scientists, and others dedicated to the enhancement of environmental quality and the wise use of natural resources. EDF has long been interested in flood plain management as an alternative to structural flood control works and, more recently, has become active in efforts to preserve wetlands and other areas of critical environmental importance.

In November of 1974, the Federal Insurance Administration proposed revisions in its regulations governing the National Flood Insurance Program and prepared a draft environmental impact statement (EIS) covering expected impacts of both existing and revised regulations. The following are EDF's comments on both the revised regulations, as proposed, and the above-titled draft EIS.

1. General. A major shortcoming of the analysis of environmental consequences is its failure adequately to describe the natural setting of regulation such as the natural function of riverine and coastal flood plains, the role which natural buffers play in mitigating extremes in water flow, and effects of encroachment and alteration of natural watercourses. Although

these natural systems are referred to in many places in the draft EIS, a concise statement would aid in public understanding of the wisdom and need for the proposed regulatory action. One who is unfamiliar with the dynamics of the flood plain cannot be expected to fully understand the basic thrust of the proposed regulations merely by picking up the bits and pieces of description scattered throughout the draft EIS.

2. A better description of the relationship between flood plain management and structural, engineering flood control works--both as tools for improving the quality of life in an environmental setting--should be attempted. Efforts at coordinating FIA and Corps of Engineers programs should be described, indicating how policy changes inherent in the proposed regulations will effect a shift in emphasis from one method of flood control to another. A lack of such coordination, in our estimation, would seriously impair the effectiveness--and, hence, the environmental consequences--of the proposed regulation.

3. Specific comments. [References are to sections of the draft EIS, as published.] [II. A. 2., page 8] The advantages of the reversion of flood plains to their natural state should be explored. Alternative uses such as riverfront parks and recreation areas should be noted.

4. [II. A. 6., page 9] The prediction that there will be less future need for protective works because of flood plain management should be justified. Some attempt should be made to describe how specific types of structures (dams, levees, channel improvements, etc.) will be replaced by flood plain management. For example, dams offer a different kind of protection than do levees, and have different environmental impacts. These specific impacts should be noted, indicating where appropriate how structures impose environmental "opportunity costs" on society.

5. [II. A. 7., page 9] The relationship between the preservation of wetlands and flood protection should be described. The possibility that greater alteration of wetlands would be promoted by requiring more fill should be explored. We have attempted to supply some of this information below.

6. [II. A. 10, page 9] The advantages of encouraging ecological diversity and productivity in flood plains should be detailed.

7. [II. A. 1. b., page 10] The negative effects of floodwater displacement of objects in the stream bed should include displacement in the entire flood plain as well, such as agricultural topsoil, residential structures, etc.

8. [II. A. 1. (Aesthetics), page 15] The aesthetic impact of riverfront parks should be noted.

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9. [II. A. 1. (Economic Effects), page 15] The manner in which the proposed regulations recognize not only the danger of flooding to individual property owners, but also--and more importantly--the dangers imposed on adjoining property owners because of "spillover" effects, should be described. A traditional maxim of real property law has been that an owner may not use his or her property in a manner which will injure others or their legitimate rights to use and enjoy their own property. To us, it seems that regulations imposed by local government to implement the Federal flood program would fall within the traditional police power framework, designed as it is to protect the public health, safety, and welfare. The cumulative effect of many property owners building in the flood plain usually has an impact disproportionate to the sum of each individual action combined. Thus, construction in the flood plain by a single property owner may be said to impose a danger upon adjoining owners and the community at large which is completely external to his or her own property. This danger may be eliminated by use of the police power under the Federal program.

10. [II. A. 1. a. (Economic Effects), page 15] The statement that development in the flood plain "may or may not deflate the market value of the land" should be explained. Among other things, it should be explained that often the "market value" of property located in flood plains does not accurately reflect the true value of the property. Market value is generally based on the ability of property to produce income for the owner. Where that expectation is low because of natural limitations on the reasonable use of the property--such as a high risk of flooding--the "market value" may be artificially high. In a sense, flood plain regulations that recognize risks of flooding do not deflate the true value of the land but, rather, ensure that the market value adequately reflects a lower (true) value based upon this risk.

11. [III. B. 1., page 16] The "bathtub" effect of fill or other encroachments of the flood plain should be noted. The cumulative effect of fill usually is to elevate floodwater levels, just as the water level in a bathtub is elevated when one gets in to bathe.

12. [II. B. 2., page 16] As noted above, impacts of specific types of structural flood works should be detailed. FIA's policy of not encouraging protective works should be justified by reference to both economic and environmental impacts.

13. [III. (Alternatives), page 17] In many ways, this section should be the focus of the environmental impact statement for flood protection policy regulations. Indeed, the FIA approach

was enacted and, heretofore, administered as an explicit alternative to primary reliance on engineering flood works. The advantages and disadvantage of each alternative, in light of the environmental and economic setting, should be clearly arrayed.

14. [IV. B. 4., page 20] The manner in which dams and other structures may encourage development of the flood-plain, and thus increase long-term flood risks by creating an artificial sense of security among those "protected," should be noted.

15. [V. (Irreversible and Irretrievable Commitments of Resources), page 21] As a generally applicable principle, it should be explained that any attempt to overcome natural forces --such as building structures to hold back floodwaters from inhabited floodplains--is more expensive than efforts to live with natural forces--such as by flood plain management. Thus, a policy of preventing flood losses which depends on structures will end up costing more than a policy which encourages harmony between man and nature by reducing dependence on structures. This cost can be measured in dollars, or in the amount of irreplaceable fossil-fuel consumed in the process of countering natural forces; dollars can be thought of merely as a measure of energy expended in producing a result. The relationship between money and energy has become painfully apparent in recent months; the FIA flood plain management program is not only an attempt to save taxpayers' money, but also to reduce dependence on fossil-fuel.

16. Wetlands. In August 1974, EDF submitted to the FIA its suggestions for amending the existing flood plain management regulations in an effort to promote the preservation of wetlands located in both river basins and coastal barrier island complexes. Our suggestions are attached and a general assessment of their environmental impact follows.

Setting: Wetlands located in riverine flood plains and in coastal flood-prone areas perform a number of natural functions that have the effect of mitigating extremes in water flow caused by natural phenomena such as heavy rainfall, local storms, and high tides. Marshlands can absorb up to 300 thousand gallons of floodwater per acre by acting like giant sponges and holding basins. [P. Johnson, Wetlands Preservation 1 (1969)] Tidal wetlands also slow the velocity of storm-driven water and protect communities located behind barrier island/marsh systems on the coastal flood plain. Further, wetlands act as a mechanism which precipitates sediment suspended in floodwaters that otherwise would be carried downstream and deposited on prime agricultural land or developed areas. Thus, these areas are natural flood control works, provided without cost by nature. Federal policies of the Army Corps of Engineers, the U. S. Environmental Protection Agency, and the Fish & Wildlife Service encourage the preservation of wetland resources because of the valuable functions they perform. Other

functions of wetlands, unrelated to flood protection, include: support of two-thirds of the nation's fishing industry by serving as habitat, breeding and nursery grounds, as well as a link in the food chains, of many commercially important fish species; habitat for rare and endangered species, considered important as a litmus test for the general health of the environment; potential to act as secondary sewage treatment facilities; breeding, nesting, and feeding areas for wildlife and waterfowl that provide recreational opportunities for millions of people; aesthetic and open space value in an increasingly urbanized nation.

Because they are located near water, an important determinant of the value of land, wetlands have become subject to increased pressure from development. The pressure has been increased, as well, by the disappearance of other areas available for development due to sprawl and unplanned development. Development of wetlands creates economic benefits--increased tax base, jobs, income to the community, profit to developers. But the destruction of marshland that accompanies most developments also imposes costs on the community by eliminating natural functions that perform valuable services for free. Some costs--such as decreased flood protection--can be overcome by spending money to replace the functions destroyed. Other costs--such as a decline in fisheries productivity--may not be capable of replacement.

Objective of Amendments: The revisions to the existing FIA flood plain management regulations proposed by EDF are designed to preserve, and take advantage of, the free natural flood control services performed by wetlands. The revisions are also designed to discourage destruction of wetlands by conversion into developments. Developments located on wetlands that occupied flood plains will themselves be flood-prone, subjecting new residents to flood risks as well as increasing the likelihood of flooding in areas formerly protected by the wetlands.

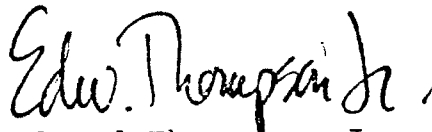
Alternatives: Destruction of wetlands by filling or by inundation (caused by dams) eliminates their ability to serve as flood protection mechanisms. Development of wetlands not only reduces flood-protection capacity but also increases the need for new structures to protect houses and other buildings located on flood-plain wetlands. Other important natural functions of wetlands also are eliminated by development as well as alternative uses of wetlands for recreation and open space. Inundation of riverine wetlands reduces habitat areas and ecosystem diversity which promotes stability of ecosystems by offering greater resistance to changes both natural and man made. No flood plain management program, designed to reduce the costs of flooding, can be completely effective and efficient unless it takes advantage of free flood control mechanisms. Structural solutions usually destroy rather than preserve these mechanisms.

Impact of Wetlands Preservation and its Alternatives: Encouraging the preservation of wetlands helps maintain their natural flood control functions that provide a free service to the community. Some economic benefits associated with development of wetlands in flood plains and coastal areas may be reduced by restricting such development. Most of these economic benefits can be achieved as readily by encouraging development at upland sites, except where urbanization has foreclosed this option. Other important functions of wetlands, unrelated to flood protection, will also be preserved; again, the effect will be to increase the attractiveness of the community and reduce the costs of replacing these functions.

Allowing development of flood-plain wetlands or their inundation by structural flood control solutions not only destroys their capacity to mitigate floods but also creates further risks for those who locate on the former wetlands. While potential intensity of urbanization is increased, and with it potential economic benefits, alternatives which destroy wetlands impose costs on the community of the type that the FIA flood plain program was design to eliminate.

To summarize, short-term use of wetlands in a manner which destroys their natural functions--e.g., by allowing filling or inundation--will reduce ecosystem diversity and eliminate the benefits of the long-term productivity of this resource, including those benefits associated with flood-protection.

Respectfully,



Edward Thompson, Jr.
Wetlands Monitor

A PROPOSAL BY THE ENVIRONMENTAL DEFENSE FUND
TO AMEND HUD/FHA REGULATIONS UNDER THE
NATIONAL FLOOD INSURANCE PROGRAM
IN THE INTERESTS OF PRESERVING WETLANDS
AND REDUCING FLOOD DAMAGE

1. Authority to prescribe comprehensive criteria for land use and management by flood-prone communities is contained in §1361 of the National Flood Insurance Act of 1968, as amended, 82 Stat. 587, 42 U.S.C. §4102.
2. Pursuant to this authority, the Secretary of Housing and Urban Development has issued regulations codified in Title 24, Code of Federal Regulations, Chapter X, Part 1910, entitled "Criteria for Land Management and Use."
3. One technique of constricting the development of land which is exposed to flood damage, of reducing the damage caused by floods, and of improving the long-range land management and of flood-prone areas, is to preserve and enhance riverine, estuarine, and tidal wetlands.
4. According to an official policy statement of the U.S. Environmental Protection Agency, 38 Federal Register 10834, (May 2, 1973), the Nation's wetlands including marshes, swamps, bogs, and other low-lying areas, which during some period of the year will be covered in part by natural nonflood waters, are a unique, valuable, irreplaceable water resource.

They serve as a habitat for important breeding birds, many species of fish, and waterfowl. Such areas provide excellent waterfowl, and in the natural purification of water, and maintain and recharge the ground water resource. They are the nursery areas for a great number of wildlife and aquatic species and serve at times as the source of valuable harvestable timber. They are unique recreational areas, high in aesthetic value, that contain delicate and irreplaceable specimens of fauna and flora and support fishing, as well as wildfowl and other hunting.

If for no other reason, wetlands deserve extraordinary protection because they act as buffers and storage areas for waterflow increased by flood conditions.

5. Few natural resources are as scarce and endangered as wetlands. A 1956 study by the Department of the Interior, [Shaw and Fredine, "Wetlands of the United States," U. S. Fish & Wildlife Service, Circular No. 39], estimated that of the 127 million acres of original wetlands in this country, only 80 million remained. The gradual but deliberate disappearance of wetlands has been due primarily to the draining, dredging and filling of these areas for the purposes of agriculture, maintenance of navigation, and -- increasingly -- the construction of homes and industrial facilities.
6. It is no mere coincidence, we submit, that the accelerating destruction and human occupancy of wetlands -- located, for the most part, in flood-plains and coastal hazard areas -- have occurred simultaneously with a dramatic rise in property damage and lives lost due to flooding. People have moved into flood-prone areas that formerly served as flood control mechanisms.

7. Accordingly, in an attempt to reverse the unfortunate and costly trend toward increased destruction of wetlands and, thereby, to reduce the danger of flooding, we offer the following amendments to HUD/FIA regulations:

8. Title 24, Code of Federal Regulations, Chapter X, Part 1910.3(d)(6) should be amended to provide:

"Prohibit fill or encroachments within the designated floodway that would impair its ability to carry and discharge the waters resulting from the 100-year flood, except where the effect on flood heights is fully offset by (i) stream improvements that will not substantially increase the risk of flooding if the limits of their protective capacity are exceeded, or (ii) by the restoration of wetlands and other natural buffer areas."

This amendment recognizes that stream channelization and structural flood control measures are only partially effective to prevent flood damage and may actually increase the risk of flooding by inducing encroachment of the flood-plain in reliance on their presence. Thus, only those "stream improvements" should be permitted which will not increase the risk of flooding if they are overflowed or collapse. For example, filling a marsh to construct homes behind a levee built to protect those new homes would, according to the intention of our amendment, increase the risk of flooding by subjecting more people to potential damage; this type of activity should not be permitted.

The amendment also recognizes that non-structural approaches to flood control, such as preserving wetlands, are effective and relatively inexpensive. It is unlikely, we suspect, that the additional exception proposed will lead to more filling and encroachment of floodways; in most cases, those areas which

might be filled will consist of wetlands and the exception would be, and is intended to be made, unavailable to permit this activity.

9. Title 24, Chapter X, Part 1910.3(e)(5) should be amended to provide:

"Provide that no land below the level of the 100-year flood in a coastal high hazard area may be developed unless the new construction or substantial improvement (i) is located landward of the reach of the mean high spring tide, or landward of adjacent wetlands as defined by the U. S. Environmental Protection Agency in its regulations issued under 3309 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1313d, whichever is higher, (ii) is elevated on adequately anchored piles or columns to a lowest floor level at or above the 100-year flood level and securely anchored to such piles or columns, and (iii) has no basement and has the space below the lowest floor free of obstructions so that the impact of abnormally high tides or wind-driven water is minimized."

The amendment rejects the mean high tide line as a standard for demarcating the area subject to flood risk in coastal communities. Further, the mean high tide line may be an appropriate standard to limit Federal jurisdiction for purposes of navigational servitude, but it has no significance in relation to Federal jurisdiction under the Commerce Clause for the purposes either of water pollution control [see, e.g., United States v. Holland, 6 ERC 1368 (N.D. Fla. 1974)] or flood protection. Therefore, we have substituted "mean high spring tide" as a more appropriate gauge of flood risk in the coastal zone. If yet another, higher standard would be even more appropriate, that standard should be used.

The primary focus of this amendment, however, is to discourage the development of tidal wetlands. Development in these areas

not only subjects property owners therein to increased risks of flood damage, but also it may reduce the effectiveness and value to the community of the wetlands as a storm and flood-water buffer. The SPA standard for defining "wetlands" has been used because it, presumably, will offer significant protection to these areas and for the sake of consistency with dredging and pollution control programs. It should be noted that, to date, EPA regulations under §104 have not been published, although they are expected shortly.

We anticipate that the exercise of State and local police powers, required by §1910.23(a)(5), as amended, will be deemed a reasonable restriction on the use of land because of the hazards and cost to communities which attend the development in flood-prone areas. Provided that local regulation does not exceed substantially the standards prescribed by our amendment, we believe that such restrictions will not, and should not, amount to a taking of private property without just compensation under the V and XIV Amendments to the Constitution.

10. Title 24, Chapter X, Part 1910.23(b)(10) should be amended to provide:

"Possibilities of acquiring land or land development rights for public purposes consistent with effective flood plain management, particularly for the purpose of protecting wetlands and other natural areas which serve as buffers and storage areas for flood waters."

The amendment, too, recognizes the value of wetlands for the mitigation of flood losses. Acquisition of fee title or less-than-free interests in wetlands will obviate any possibility of a taking arising from an unlawful "taking" and will offer the maximum

amount of protection to these vital areas.

11. Title 24, Chapter X, Part 1910.23(b)(13) should be amended to provide:

"For coastal areas, the need to establish programs for building bulkheads, seawalls, breakwaters, and other damage abatement structures, and especially for preserving natural barriers to flooding, such as sand dunes, wetlands, and vegetation."

This minor amendment merely re-emphasizes the importance of utilizing the less costly, but no less effective, natural flood protection mechanisms in lieu of structures.

12. Title 24, Chapter X, Part 1910.23(b) should be amended by adding subsection (14), as follows:

"Possibilities of reducing the property tax assessment on wetlands and other natural flood buffer areas restricted from development by regulations required under Part 1910 of this Chapter, to reflect the reduced property value of such areas."

This amendment suggests to communities one method of circumventing the "taking" issue, by compensating landowners for restrictions placed on their property in the public interest. Reduced assessments must be coupled with parallel restrictions on use to avoid speculation without effective preservation.

EDF has been successful in persuading the Nassau County (New York) Board of Assessors to reduce the tax burden on 104 acres of tidal wetlands at Lido Beach, Long Island, in order to reduce the economic incentive to develop the wetlands and to foster equitable treatment of landowners subject to the state's wetlands protection act. We encourage all communities to consider this approach to preserving a natural resource which contributes significantly to reducing flood risks.

Respectfully submitted,

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Edward Thompson, Jr.
Wetlands Monitor

August 30, 1974